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**INVESTIGATION OF WHITEWATER
DEVELOPMENT CORPORATION
AND RELATED MATTERS**

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**SPECIAL COMMITTEE TO INVESTIGATE
WHITEWATER DEVELOPMENT CORPORATION
AND RELATED MATTERS**

ADMINISTERED BY THE

**COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED FOURTH CONGRESS**

FIRST SESSION

VOLUME II

ON

**THE INQUIRY INTO WHETHER IMPROPER CONDUCT
OCCURRED REGARDING THE WAY IN WHICH
WHITE HOUSE OFFICIALS HANDLED DOCUMENTS
IN THE OFFICE OF WHITE HOUSE DEPUTY COUNSEL
VINCENT W. FOSTER, JR., FOLLOWING HIS DEATH**

AUGUST 7, 8, 9, 10; OCTOBER 25, AND 26, 1995
NOVEMBER 2; DECEMBER 8, 11, 13, AND 18, 1995

Printed for the use of the Committee on Banking, Housing, and Urban Affairs



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**INVESTIGATION OF WHITEWATER
DEVELOPMENT CORPORATION
AND RELATED MATTERS**

HEARINGS

BEFORE THE

**SPECIAL COMMITTEE TO INVESTIGATE
WHITEWATER DEVELOPMENT CORPORATION
AND RELATED MATTERS**

ADMINISTERED BY THE

COMMITTEE ON

**BANKING, HOUSING, AND URBAN AFFAIRS
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WASHINGTON : 1997

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INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

VOLUME II

MONDAY, AUGUST 7, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE THE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 11:30 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. At this point we'll ask our witnesses to step forward, Mr. McLarty, Mr. Quinn, Mr. Gergen, and Mr. Burton.

I believe that you all have a statement of some kind to give and we would be willing to take those statements now, and at your convenience we'll start with Mr. McLarty.

Mr. McLarty.

SWORN TESTIMONY OF THOMAS F. McLARTY FORMER CHIEF OF STAFF TO THE PRESIDENT

Mr. McLARTY. Mr. Chairman and Members of the Committee, my name is Mack McLarty and I am Counselor to the President. I served as Chief of Staff to the President from his inauguration until June 17, 1994. I was Chief of Staff at the time of Vincent Foster's tragic death in July 1993.

I understand this Committee is investigating the handling of the documents in Mr. Foster's office in the days following his death. I have submitted a prepared statement, and I would like to make it part of the record, but, Mr. Chairman, I will not read it now. I will make only a few brief introductory remarks.

Vince Foster was one of my oldest friends and I had the highest regard for him, both personally and professionally. His death was an enormous personal tragedy as well as a loss to the President and the people of our country.

It is important, however, for the Committee and the American people to understand, I believe, some context. Although the inquiry into Mr. Foster's death and the review of his office were important,

it was my job and that of others to ensure to the best of our ability that this tragedy did not disrupt the ongoing responsibilities of the White House. I felt that is what Vince would have wanted us to do and everyone worked and did their very best to move forward as they were grieving.

The days following his death, as you would expect, were extraordinarily full. In addition to making arrangements to transport the President and a large party to Little Rock for the funeral, and responding to literally hundreds of condolence calls and letters, we were confronting the need to get Federal emergency relief to flooded areas in the Midwest, to handle the complexities of the budget reconciliation, and to deal with important matters of foreign policy. Those and other matters were vitally important to the American people and could not be put aside, even though the personal loss we felt was enormous.

People did their very best and responded, I believe, in the highest traditions of public service. Those people responsible for Mr. Foster's office and its contents, principally the White House Counsel and his staff, did the same. Although there were apparently some differences of opinion, which I was not aware of, I never heard nor do I have any reason to believe that a desire to conceal matters relating to Whitewater, or anything else relating to the President's private affairs, motivated their decisionmaking.

Mr. Chairman, I'll be happy to try to fully respond to any questions that you or other Members of the Committee may have today. Thank you.

The CHAIRMAN. Thank you, Mr. McLarty.

Mr. Quinn.

**SWORN TESTIMONY OF JOHN M. QUINN
ASSISTANT TO THE PRESIDENT, CHIEF OF STAFF AND
COUNSEL TO THE VICE PRESIDENT**

Mr. QUINN. Good morning. My name is John Michael Quinn. I'm an Assistant to the President and Chief of Staff and Counselor to the Vice President. I've held this position since early in July 1993, prior to which time I was Deputy Chief of Staff and Counsel to the Vice President.

Before joining the Administration, I was a partner in the Washington law firm of Arnold & Porter. I joined that firm in the fall of 1976 and received both my undergraduate and law degrees from Georgetown University. I will do my best today, Mr. Chairman, to answer any questions the Committee may have of me about the circumstances surrounding the search of Mr. Foster's office following his tragic death. Thank you.

The CHAIRMAN. Thank you, Mr. Quinn.

Mr. Gergen.

**SWORN TESTIMONY OF DAVID R. GERGEN
FORMER COUNSEL TO THE PRESIDENT**

Mr. GERGEN. Good morning, Mr. Chairman. I did not come with a prepared statement. My name is David Gergen. In early June 1993, I joined the White House staff as Counselor to the President. I left that position in the summer of 1994 and spent 6 months in

a role advising the President and Secretary of State on foreign policy matters, at which time I left the Administration altogether.

I have previously given a deposition to this Committee about the events surrounding the death of Vince Foster and I am prepared and look forward to answering the questions of this Committee as fully as I can.

The CHAIRMAN. Thank you, Mr. Gergen.

Mr. Burton.

**SWORN TESTIMONY OF C. WILLIAM BURTON
FORMER DEPUTY ASSISTANT TO THE PRESIDENT AND
POLICY & STAFF DIRECTOR FOR THE CHIEF OF STAFF
TO THE PRESIDENT**

Mr. BURTON. I also have no statement, Mr. Chairman. My name is Bill Burton. I live in Austin, Texas and I practice law. I worked in the White House from approximately May 1993 until July 1, 1994, during which time I primarily served as Mr. McLarty's Staff Director. I will be happy to answer any questions that the Committee has.

The CHAIRMAN. Thank you.

At this time we will turn to Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Burton, just to go back over your background, am I correct that you, in fact, worked one summer at the Rose Law Firm?

Mr. BURTON. No, sir.

Mr. CHERTOFF. You never worked at the Rose Law Firm?

Mr. BURTON. I did work at the Rose Law Firm during the school year.

Mr. CHERTOFF. During the school year. When was that?

Mr. BURTON. 1988, 1989.

Mr. CHERTOFF. During that experience, did you have occasion to work with Vincent Foster?

Mr. BURTON. Yes.

Mr. CHERTOFF. Did you have occasion to work with Hillary Clinton?

Mr. BURTON. Only tangentially.

Mr. CHERTOFF. On what, do you remember?

Mr. BURTON. I worked with an associate who was working on a matter Mrs. Clinton had concerning a products liability matter for a client in a foreign country.

Mr. CHERTOFF. Now, let me direct your attention, Mr. Burton, to July 26, 1993, which was a Monday. Do you remember, sometime in the late afternoon, Mr. Nussbaum coming into the Chief of Staff's Office on the first floor of the West Wing looking for Mr. McLarty?

Mr. BURTON. It happened sometime that afternoon, yes, sir.

Mr. CHERTOFF. Where was Mr. McLarty at that point?

Mr. BURTON. He was in Chicago.

Mr. CHERTOFF. Tell us what happened.

Mr. BURTON. Mr. Nussbaum came into the Chief of Staff's reception area asking for Mr. McLarty. We informed him that he was out of town. Mr. Nussbaum asked me to accompany him to his office, and I did that.

Mr. CHERTOFF. When you got to his office, where did you go?

Mr. BURTON. I went to the conference table that was in his office where Mr. Neuwirth was already there.

Mr. CHERTOFF. Did Mr. Nussbaum shut the door to his office after you went in?

Mr. BURTON. I don't recall. The office door was closed while we were in there.

Mr. CHERTOFF. Tell us what you observed on the conference table?

Mr. BURTON. A piece of legal paper that had been torn apart and was being put back together.

Mr. CHERTOFF. You didn't see it being torn apart, I take it?

Mr. BURTON. No, that's correct.

Mr. CHERTOFF. You saw it being put together?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. Was it actually put together by the time you got up there?

Mr. BURTON. It was almost completed, and it was completed during the first few minutes that I was up there.

Mr. CHERTOFF. Did you read it?

Mr. BURTON. Yes, I did.

Mr. CHERTOFF. Did you touch it?

Mr. BURTON. I don't recall. I probably did.

Mr. CHERTOFF. Do you recall it to be a single sheet of yellow legal paper containing Vincent Foster's handwriting?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. After you got into the room, you were there with Mr. Neuwirth and Mr. Nussbaum; correct, at that point?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. Then did there come a point when you made a call to Chicago?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. Who did you call?

Mr. BURTON. Mr. McLarty.

Mr. CHERTOFF. Why did you call him?

Mr. BURTON. Because Mr. Nussbaum was looking for Mr. McLarty to tell him about having found this writing that had Mr. Foster's handwriting on it.

Mr. CHERTOFF. Tell us about that discussion.

Mr. BURTON. We talked to Mr. McLarty in two conversations that afternoon, and I cannot remember today 2 years later, what precisely we talked about at each of the two different conversations, but basically we talked about the fact that a writing had been found. We either described generally the contents of the writing or, in fact, perhaps read the writing to Mr. McLarty.

There was a discussion with Mr. McLarty about what steps would be taken next, such as notifying the widow, Lisa Foster, looking into any issues surrounding—that would be related to having—to turning the note over to law enforcement officials, such as were there any privilege concerns that needed to be researched or looked into. Beyond that, I don't recall any other discussion.

Mr. CHERTOFF. Do you remember Mr. Nussbaum actually reading the note over the telephone to Mr. McLarty?

Mr. BURTON. I cannot say I remember one way or another on that. I remember the gist of the note was given to Mr. McLarty.

Whether that was a verbatim reading or whether it was—telling him what was in the note, I do not recall.

Mr. CHERTOFF. Mr. McLarty, do you remember being actually read the content of the note?

Mr. McLARTY. Mr. Chertoff, my memory is that Mr. Nussbaum did read me the note. At least that was my impression.

Mr. CHERTOFF. Did you, in fact, write it down?

Mr. McLARTY. No, I did not.

Mr. CHERTOFF. Did you have it read to you slowly?

Mr. McLARTY. I don't recall that I asked for it to be read slowly. I believe Mr. Nussbaum read it to me, or at least that's how I remember it and that was my impression.

Mr. CHERTOFF. Mr. Burton, during the time between the first call you had with Mr. McLarty and the second call, did anybody else walk into Mr. Nussbaum's office?

Mr. BURTON. The only person—the only other person to come in the office while I was in there that day, that afternoon, was Mrs. Clinton. I do not recall if that was in between the two phone calls or directly after, but I believe it was between the two phone calls.

Mr. CHERTOFF. How did that come about?

Mr. BURTON. Mr. Nussbaum went to get Mrs. Clinton and bring her into the room.

Mr. CHERTOFF. Did he tell you and Mr. Neuwirth he was going to go get Mrs. Clinton?

Mr. BURTON. I don't remember, but that sounds right.

Mr. CHERTOFF. Did he tell you why he was going to get her?

Mr. BURTON. No, sir.

Mr. CHERTOFF. Did he have with him at the time a copied down transcription of the note?

Mr. BURTON. I do not remember at what point Mr. Nussbaum transcribed the note. I do remember him transcribing the note that afternoon.

Mr. CHERTOFF. By the way, do you remember at some point in the afternoon somebody was looking for a typewriter?

Mr. BURTON. No, I do not.

Mr. CHERTOFF. After Mr. Nussbaum indicated he was going to go out to get the First Lady, how much time elapsed before he returned with the First Lady?

Mr. BURTON. A very short amount of time.

Mr. CHERTOFF. Tell us what happened.

Mr. BURTON. Mr. Nussbaum came into the office with the First Lady.

Mr. CHERTOFF. Did they shut the door?

Mr. BURTON. I remember—I generally remember the door being closed while—the whole time we were in the office that afternoon so—

Mr. CHERTOFF. All right.

Mr. BURTON. He explained to her that a writing had been found. It was in Mr. Foster's hand. He explained generally the circumstances surrounding the finding. He described generally the contents of the note, and he mentioned what we were to do next, the notifying of Mrs. Foster and looking into whether there were any privilege issues and, as best as I can recall, he at that point started to read the note to her. He had transcribed it and started to read

the note to her, which helps me remember that he probably did have it when he went to her because he did not transcribe it while she was in the room. So he started to read the note to her, at which point she interrupted him and questioned her having been brought into the room and left the room.

Mr. CHERTOFF. What do you mean she questioned her having been brought into the room?

Mr. BURTON. She explained that she did not understand why she had been brought into the room, that the decisions to be made concerning the privilege issues, notifying the Foster family were other people's decision to make and she left the room.

Mr. CHERTOFF. Well, when she walked into the room at first, did she express any puzzlement as to why she was there?

Mr. BURTON. I don't recall that.

Mr. CHERTOFF. Did she look at the note?

Mr. BURTON. She did glance at the note.

Mr. CHERTOFF. You remember her now looking at the note?

Mr. BURTON. I've always remembered her looking at the note.

Mr. CHERTOFF. Did she read the note?

Mr. BURTON. She did not read the note.

Mr. CHERTOFF. So she walked over to the conference table; right?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. She looked down?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. For how long?

Mr. BURTON. Less than 30 seconds, perhaps as little as 5 seconds.

Mr. CHERTOFF. Not enough time to read it?

Mr. BURTON. Correct.

Mr. CHERTOFF. In fact, she didn't have it read to her, either?

Mr. BURTON. She did not.

Mr. CHERTOFF. She just said I don't know why I'm here, why I was brought in here and she left?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. Was it your impression when Mr. Nussbaum went to get her that he was actually carrying a transcription of the note with him?

Mr. BURTON. As I just testified, sir, I do recall him having a transcription of the note, yes, sir.

Mr. CHERTOFF. Did you ask Mr. Nussbaum, after this appearance by the First Lady and then her withdrawal, why he had bothered to bring her in if she wasn't going to look at the note?

Mr. BURTON. No, sir.

Mr. CHERTOFF. A couple of days later you were interviewed by the Federal Bureau of Investigation; correct?

Mr. BURTON. I don't remember the timing. After that, I was interviewed by the FBI, yes, sir.

Mr. CHERTOFF. I think we've given you a copy of a 302. It's FBI 24 and 25. It indicates that there was an interview of you on July 30, 1993. Does that seem approximately correct to you?

Mr. BURTON. I have not seen this before. It was given to my attorney right before, just a few minutes ago, so I've never seen that. But that's consistent with my memory of the time frame in which I was interviewed by the FBI.

Mr. CHERTOFF. Did you tell the FBI the First Lady had been in the room?

Mr. BURTON. I don't remember.

Mr. CHERTOFF. Why don't you take a look at that memorandum. If we could stop the clock for a moment, Mr. Chairman, while Mr. Burton has an opportunity to review it and we'll also put it up. Then see if that refreshes your memory about whether you mentioned the First Lady's appearance to the FBI.

Mr. BURTON. I've had a chance to review it.

Mr. CHERTOFF. Am I correct that nowhere in that report of the interview of you by an FBI agent is there any mention of the First Lady?

Mr. BURTON. I didn't see a reference to it in my review of it.

Mr. CHERTOFF. Do you have a recollection of mentioning it to the FBI?

Mr. BURTON. No, my memory of the FBI interview was that the FBI agents were primarily interested in the search of the office that had occurred the previous week and the finding of the note itself and were less interested in the material that occurred thereafter.

Mr. CHERTOFF. Didn't they ask you and didn't you, in fact, tell them that you had been in the room; right?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. Mr. Nussbaum was in the room?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. You told them that Mr. Neuwirth was in the room?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. You told them that you had called Mr. McLarty; right?

Mr. BURTON. Yes, sir. That information is all in the 302, yes, sir.

Mr. CHERTOFF. But no mention of the First Lady?

Mr. BURTON. That's correct.

Mr. CHERTOFF. Let me also, by the way, direct your attention to an exhibit that I think is in your handwriting. It's Z1148. It's actually part of a series of documents that run from Z1143 to Z1151, and I think you have it in front of you.

Mr. BURTON. My attorney just handed me some notes. What was the number again, Mr. Chertoff?

Mr. CHERTOFF. Particularly Z1148. That's your handwriting; right?

Mr. BURTON. Yes, sir, it is my handwriting.

Mr. CHERTOFF. Are these notes of a meeting you had the next day, Tuesday, July 27, concerning how to handle the discovery of this writing by Vincent Foster?

Mr. BURTON. I'm not sure—first of all, can you tell me if these are in sequence?

Mr. CHERTOFF. They're as we got them from the White House, Z1143 to 1151, so we're kind of bound by what they've given us, and—

Mr. BURTON. I'm going to take a leap of faith here and assume that 1147 precedes 1148 in my spiral notebook and if that is the case, then it was a meeting that probably would have actually oc-

curred on the day after the note was turned over to the Park Police through the Attorney General.

Mr. CHERTOFF. So that would be the 28th; right, the Wednesday?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. Now, on Z1148—who was in this meeting on that Wednesday?

Mr. BURTON. I remember it being a rather large meeting in Mr. McLarty's office. Among others who were there, according to my notes, were Roy Neel, Mr. Gergen, George Stephanopoulos. I don't remember who all was there, but Mr. Lindsey may have been in that meeting. It was a large meeting.

Mr. CHERTOFF. What is that reference to "HRC" and then an arrow and there's a little "n" next to it?

Mr. BURTON. What is the reference?

Mr. CHERTOFF. Yes.

Mr. BURTON. I do not know.

Mr. CHERTOFF. Is that a discussion about whether it was going to be revealed that Mrs. Clinton had seen the note?

Mr. BURTON. I don't remember that being discussed at that meeting.

Mr. CHERTOFF. Was it discussed at any meeting?

Mr. BURTON. I don't remember that ever being discussed, no, sir.

Mr. CHERTOFF. Here's the problem I'm having. Someone had raised the issue on Thursday when Mr. Neuwirth was here about getting the original notes of the FBI interview in which Mr. Neuwirth also fails to mention the First Lady, and Mr. Neuwirth had taken the position that he mentioned it at the end of the interview. We have the notes, which were furnished to us by the Department of Justice at our request. It's A139 through 141.

Those notes indicate that, in what appears to be a narrative statement, Mr. Neuwirth also managed to omit the First Lady from being one of the people who was in the room. We have also seen documents here which indicate that Mr. Nussbaum during his interview failed to mention the First Lady being present. I guess the question in my mind is, was this just collective forgetfulness about the First Lady's appearance or was there discussion among yourselves about whether to mention the First Lady having been in the room in interviews by the Federal Bureau of Investigation during the week of the 26th?

Mr. BURTON. I remember never discussing with anyone the issue of whether or not we should report that Mrs. Clinton was in the room.

Mr. CHERTOFF. I would, by the way, Mr. Chairman, ask to make part of the record A139 to 141, which are the original notes of Mr. Neuwirth's interview in which Mr. Neuwirth indicates the presence of himself, Mr. Nussbaum, and Mr. Burton and the call to Mr. McLarty and then adds at the end of his discussion of what happened on Monday—according to the agent's notes, no one was notified on Monday night. There's no mention to my eye of the First Lady having been involved in seeing the note on the 26th.

The CHAIRMAN. I will have these placed in the record as the notes of the agent. There was some question with respect to them, and we will enter them in the record.

Mr. CHERTOFF. Did Mrs. Clinton say to you when she was in the room that she didn't want to be involved in this particular decision about turning over the——

Mr. BURTON. I don't recall that.

Mr. CHERTOFF. Did she indicate to you I don't know why you're involving me, that's not my decision?

Mr. BURTON. That's more the tenor of her comments, yes, sir.

Mr. CHERTOFF. Did you infer from that that there had been an involvement by her in earlier decisions having to do with the handling of the documents?

Mr. BURTON. No, sir.

Mr. CHERTOFF. You don't know why she just came up and said that's not my decision, there was no elaboration of why she was making that disclaimer?

Mr. BURTON. I think it was fairly obvious why she wasn't—why the First Lady wouldn't be involved in issues regarding notifying the family and researching the privilege issues in the note.

Mr. CHERTOFF. So why did she say it? You said it was obvious. Why was she brought in and why was there a need to see it?

Mr. BURTON. I don't know why she was brought in, but my point is it's obvious why the First Lady is not involved in notifying the family of the finding of a writing and researching privilege issues.

Mr. CHERTOFF. What about in the decision about when to turn it over, was that obviously not her decision?

Mr. BURTON. I do not see what input she could have added to that, no, sir.

Mr. CHERTOFF. Was the First Lady in the room when you had your—during either one of the calls to Mr. McLarty in Chicago?

Mr. BURTON. I don't recall. I don't believe—I definitely remember she was not in the room on the first call to Chicago. I don't recall her being there for the second call, but I just don't remember it that well.

Mr. CHERTOFF. Mr. McLarty, do you remember being told in either one of those telephone calls on the 26th that the First Lady had been in the room and had been advised about the note?

Mr. McLARTY. Mr. Chertoff, I recall being told that the First Lady had been told of the note, yes.

Mr. CHERTOFF. Now, did you tell the President on Monday about the fact that a note had been found?

Mr. McLARTY. No, I did not.

Mr. CHERTOFF. Why not?

Mr. McLARTY. At that time, Mr. Chertoff, there was—first of all, I was perplexed by the note and what it meant. I tried to understand it. We had not notified the Foster family at that time and we had deferred a judgment as to how to proceed until the next morning when we all were back in Washington. There had been the matters of privilege raised and I made a decision not to tell the President until we had things in order and a plan of action to go forward.

Mr. CHERTOFF. You actually flew back with the President that night; right?

Mr. McLARTY. I did.

Mr. CHERTOFF. And during this entire trip you never mentioned to the President that something had been found in Vincent Foster's handwriting?

Mr. MCLARTY. No, I did not.

Mr. CHERTOFF. You knew that the First Lady had not only been advised of it, but actually had been in the room with the note?

Mr. MCLARTY. I knew the First Lady had been told about the note, Mr. Chertoff.

Mr. CHERTOFF. It did not occur to you when the President got home that night, the First Lady might mention it to him?

Mr. MCLARTY. I did not really think about that point. I made a judgment that since we only had partial information and had not had a plan of action, I would not involve the President in this matter at that time.

Mr. CHERTOFF. Am I correct that for the preceding several days one of the burning questions that had been asked by people in the White House was whether there was any writing or anything to indicate why Mr. Foster may have taken his own life; right?

Mr. MCLARTY. I think there were understandable questions about why Mr. Foster took his life. I don't know about a burning question and so forth. It was my understanding there was no note.

Mr. CHERTOFF. To your knowledge, this looked to be a possible candidate to be that note; right?

Mr. MCLARTY. Mr. Chertoff, the note did not strike me in that manner. It had no date or salutation and no signature and no reference to suicide. It honestly did not strike me as a suicide note. I was perplexed about it and could not understand it.

Mr. CHERTOFF. Did you think it might be part of a larger document?

Mr. MCLARTY. No, that thought did not occur to me.

Mr. CHERTOFF. That never occurred to you?

Mr. MCLARTY. No, it did not.

Mr. CHERTOFF. Even though there was no salutation and no conclusion?

Mr. MCLARTY. No, Mr. Chertoff, that thought did not occur to me.

Mr. CHERTOFF. Let me take you back, Mr. McLarty, to the 20th, which was the day that Mr. Foster was discovered in the park. You went out to the Foster house with the President on that night after the conclusion of the Larry King show; correct?

Mr. MCLARTY. Yes, after I informed the President he wanted to go to the Foster home and asked me to go with him. I did accompany him and I also wanted to go to the Foster home to express my condolences.

Mr. CHERTOFF. The taping ended around 10:00 p.m.; right?

Mr. MCLARTY. That's correct, Mr. Chertoff.

Mr. CHERTOFF. Is it fair to say you told the President and the President spoke to the First Lady and over the next 20 or 25 minutes preparations were made to go to the house?

Mr. MCLARTY. That's correct. It may have been a bit longer, but that's correct.

Mr. CHERTOFF. Is it fair to say you got to the house by—a little bit before 11:00 p.m.?

Mr. McLARTY. I believe that's right, Mr. Chertoff. I am not sure precisely the time we arrived, but I think it was in that general time frame.

Mr. CHERTOFF. Certainly later than quarter to 11:00?

Mr. McLARTY. Mr. Chertoff, I really don't remember exactly when we arrived at the home. I think it was a bit before 11:00 p.m., but I'm not positive of that.

Mr. CHERTOFF. You spoke to Mr. Watkins at the house?

Mr. McLARTY. I saw Mr. Watkins and his wife at the home.

Mr. CHERTOFF. Did he tell you that he wanted to send Patsy Thomasson into the Counsel's Office to look for a note?

Mr. McLARTY. I don't recall that he mentioned anything about Ms. Thomasson to me at the Foster home.

Mr. CHERTOFF. Let me turn now to the 22nd, which is Thursday. I want to ask you, Mr. McLarty, whether during the course of that day you received telephone calls from Susan Thomases?

Mr. McLARTY. This is Thursday, Mr. Chertoff?

Mr. CHERTOFF. Thursday, July 22.

Mr. McLARTY. Mr. Chertoff, I don't recall receiving any phone calls from Ms. Thomases and I do not recall talking to her on that Thursday.

Mr. CHERTOFF. I'm going to tell you that we have records that indicate the following sequence of telephone calls between 10:48 a.m. and 11:16 a.m. At 10:48 a.m., a call to your office lasting 7 minutes, which takes us to shortly before 11:00 a.m. At 11:04 a.m., a call from Susan Thomases to Maggie Williams for a 6-minute call. At 11:11 a.m., a call back to your office for 3 minutes and almost immediately thereafter, another call to your office for 1 minute. Do you know who she was calling?

Mr. McLARTY. No, Mr. Chertoff, I do not.

Mr. CHERTOFF. Mr. Quinn, do you know who she was calling?

Mr. QUINN. No, I do not.

Mr. CHERTOFF. Mr. Gergen, do you know who she was calling?

Mr. GERGEN. I do not.

Mr. CHERTOFF. What about you, Mr. Burton?

Mr. BURTON. I do not know.

Mr. CHERTOFF. None of you had any contact with her that you remember on that morning of the 22nd of July. Is that your testimony?

Mr. McLARTY. Mr. Chertoff, I don't remember talking to Ms. Thomases that morning. I do not believe I did.

Mr. CHERTOFF. Mr. Quinn.

Mr. QUINN. Nor do I.

Mr. CHERTOFF. Mr. Gergen.

Mr. GERGEN. This is the first I've known about her calls.

Mr. CHERTOFF. Mr. Burton.

Mr. BURTON. I had very few discussions with Ms. Thomases during my time in the White House. I do recall at one point talking to her about travel on a Presidential aircraft when we were—for a funeral. I handled—I worked on travel arrangements during two funerals while I was in the White House, Mr. Foster's funeral and the President's mother's funeral. I cannot recall if she attended either of those funerals or if that was an issue—but it's possible, that's all I'm saying. I just don't want to—

Mr. CHERTOFF. Did you have a call with her on that Thursday morning?

Mr. BURTON. I don't recall, but it's possible if we were talking about—if that was the funeral that she was going to fly on the Presidential aircraft along with other friends and family to Arkansas, that it's very possible that I would have talked to her about that, yes, sir.

Mr. CHERTOFF. Would you have talked to her three times about it?

Mr. BURTON. I can't tell you that.

Mr. CHERTOFF. Did she go to the funeral?

Mr. BURTON. I believe Ms. Thomases went to the funeral, but she did not fly on the Presidential aircraft——

Mr. CHERTOFF. She left——

Mr. BURTON. That she was manifested on.

Mr. CHERTOFF. She left from New York; right?

Mr. BURTON. But she had been manifested on the Presidential aircraft at one point for one funeral. I don't remember which of the two funerals that I worked on that she was manifested on.

Mr. CHERTOFF. You don't remember one way or the other?

Mr. BURTON. That's correct.

Mr. CHERTOFF. On the morning of July 29, am I correct that you, Mr. Burton, and you, Mr. Quinn, were involved in a discussion with Mr. Nussbaum about the handling of a review of the documents in Mr. Foster's office?

Mr. QUINN. That's correct.

Mr. CHERTOFF. Is that correct, Mr. Burton?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. Where did that take place, Mr. Burton?

Mr. BURTON. My recollection is the conversation took place in the Vice President's Office in the West Wing of the White House.

Mr. CHERTOFF. Did it begin in Mr. McLarty's office?

Mr. BURTON. I don't remember.

Mr. CHERTOFF. Mr. Quinn, did it begin in Mr. McLarty's office?

Mr. QUINN. Not that I recall. It's entirely possible but my recollection of the conversation is of it entirely having taken place in the Vice President's Office.

Mr. CHERTOFF. Were the calls from Susan Thomases on that morning related to that conversation to your knowledge, Mr. Quinn?

Mr. QUINN. No.

Mr. CHERTOFF. What about you, Mr. Burton?

Mr. BURTON. No.

Mr. CHERTOFF. In this conversation, you talked about the plan for having the office searched or reviewed by law enforcement with Mr. Nussbaum; is that correct, Mr. Quinn?

Mr. QUINN. That's correct.

Mr. CHERTOFF. Were you aware that there had been an agreement reached or an understanding reached the prior evening between representatives of the Department of Justice and Mr. Nussbaum?

Mr. QUINN. I was not aware of that at that time, and I'm not aware of that now.

Mr. CHERTOFF. Were you aware that on the morning of the 22nd, at approximately 10:30 a.m. the Deputy Attorney General of the United States had told Mr. Nussbaum that his plan to go ahead with reviewing the documents himself was, in substance, a bad mistake?

Mr. QUINN. I was not.

Mr. CHERTOFF. Mr. Nussbaum didn't mention that at this meeting?

Mr. QUINN. I do not recall having heard that at that time.

Mr. CHERTOFF. Was it your understanding that the procedure that was going to be undertaken with the review of the documents would result in some kind of a record being kept of all the documents that were being reviewed?

Mr. QUINN. No. Could you rephrase that. I'm not aware at any point in the discussion with Mr. Nussbaum whether or not there would be a log or schedule created. We may have discussed that, but I don't recall the conversation having gotten to that level of specificity.

Mr. CHERTOFF. Did he tell you that he intended later in the afternoon to move some of the documents up to the White House residence?

Mr. QUINN. No, he did not.

Mr. CHERTOFF. Did you ever become aware of an index that was kept in a drawer in which the Clintons' personal files were held in Mr. Foster's office that disappeared?

Mr. QUINN. No, I did not.

Mr. CHERTOFF. Were you aware that the documents that were removed from Mr. Foster's office and taken up to the residence were not recorded or logged in in any way?

Mr. QUINN. No, I have no knowledge of that.

Mr. CHERTOFF. Did you advise that procedure—did you advise anybody not to keep a log or a record of documents being moved to the residence?

Mr. QUINN. I don't recall the subject ever having come up with me.

Mr. CHERTOFF. Mr. Burton, you were actually present, were you not, during the review of the documents in the presence of law enforcement; is that correct?

Mr. BURTON. During most of the review, yes, sir.

Mr. CHERTOFF. Do you remember the time that Mr. Nussbaum took stuff out of the briefcase?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. Would you tell us what you observed of that event?

Mr. BURTON. Early in the process, Mr. Nussbaum went through the documents in the briefcase as he did the other documents in the room and described the documents generally and then after having finished with the documents in the briefcase moved on to the documents in the desk drawer. The procedure precisely he followed—the briefcase was sitting beside Mr. Nussbaum to his right. He pulled documents out of the briefcase and set them on top of the desk and went through them and then at some point he finished—he got the last of the files out of the briefcase and, if my

memory serves me right, he moved the briefcase behind him so he could get to the desk drawer next.

Mr. CHERTOFF. Was it your understanding at that point that the briefcase was empty?

Mr. BURTON. Yes, sir, and I——

Mr. CHERTOFF. I'm sorry, go ahead.

Mr. BURTON. Yes, sir, and I've testified to that previously.

Mr. CHERTOFF. You actually were able to see into the briefcase; right?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. From where you were standing?

Mr. BURTON. That's correct.

Mr. CHERTOFF. What did you see in the briefcase?

Mr. BURTON. I saw that Mr. Foster—that Mr. Nussbaum had taken all the files out of the briefcase and that the briefcase otherwise looked empty to me, like your briefcase might look empty or my briefcase might look empty after you've taken all the files out. There was litter in the bottom of the briefcase, paper clips, a Post-it note. I remember I told the FBI agents that because I've been questioned about it many times since then.

Mr. CHERTOFF. You saw a Post-it note or something yellow in the bottom?

Mr. BURTON. Yes, sir, I did.

Mr. CHERTOFF. That was from your vantage point; right?

Mr. BURTON. When you say "a Post-it note or something yellow in the bottom," all I can tell you is that I saw there was some litter at the bottom of the briefcase. I think I saw specifically a Post-it note and some paper clips.

Mr. CHERTOFF. You could see the bottom of the briefcase from where you were as Mr. Nussbaum was removing documents?

Mr. BURTON. I could see at least a portion of the bottom of the briefcase, yes, sir.

Mr. CHERTOFF. Of course, Mr. Nussbaum was closer than you were; right?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. Let me ask you one last question. I've asked this of Mr. Neuwirth previously—at the end of this procedure after the law enforcement people had been ushered out of Mr. Foster's office, you were asked to bring Maggie Williams in; right?

Mr. BURTON. I do not recall that, no, sir.

Mr. CHERTOFF. Weren't you asked to call her and ask her to come over to Mr. Foster's office?

Mr. BURTON. I do not recall that, no, sir.

Mr. CHERTOFF. I would like to put Z951 up on the screen. We had a message pad last Thursday showing a call from Stephen Neuwirth to Maggie Williams at 3:25 p.m. on July 22. What I have here is a message pad showing a call to Maggie Williams from you at 3:05 p.m. on July 22. What was that message about?

Mr. BURTON. I don't recall.

Mr. CHERTOFF. Was it a request that Mr. Nussbaum had made of you to have Maggie Williams come over?

Mr. BURTON. I certainly don't recall that, Senator——
I mean, Mr. Chertoff.

Mr. CHERTOFF. You weren't calling her about health care litigation, though. You're comfortable about that, I take it?

Mr. BURTON. Yes, I'm comfortable I wouldn't have been talking to Maggie about health care that day.

Mr. CHERTOFF. Did you know she was coming over later that day to look at documents?

Mr. BURTON. No, sir, I did not.

Mr. CHERTOFF. You can't tell us why you left this message for her?

Mr. BURTON. No, sir. I will tell you during my time in the White House I had dozens of calls every day. I can't tell you why I called Maggie that day.

Mr. CHERTOFF. But on this day, which was the day after you had finished a tiring procedure with the Park Police and right where you were going to leave early in the morning to go to a funeral, on this day, can you tell us what was the rush in getting hold of Maggie Williams?

Mr. BURTON. I don't understand that there was a rush. There's an urgent marking on this message pad that isn't marked, for example. I just don't know why you're implying there was a rush. I can't even tell you the search was over at that point. It may have been over at 3:05 p.m. but I couldn't tell you that.

Mr. CHERTOFF. It was at least coming to a close, though, at 3:05 p.m.?

Mr. BURTON. I couldn't tell you. I don't recall. I think in the deposition we talked about that a little bit. I told you it seemed like the search took most of the afternoon. You told me it was only an hour and a quarter. I just don't remember how long it took.

Mr. CHERTOFF. I thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. I'll yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator Sarbanes.

Good morning, gentlemen. Mr. Gergen, since you've been kind of left out up to this point——

Mr. GERGEN. It's been a pleasure, sir.

Mr. BEN-VENISTE. Let me ask you, if you would, sir, to describe the mood at the White House on the 20th of July as you observed it upon learning the news of Mr. Foster's death.

Mr. GERGEN. Of course, during the day of the 20th, I don't think anyone knew of his death. I first learned of it in the latter part of the evening, and I only spoke with people in the West Wing of the White House by telephone.

I think my deposition shows, Mr. Ben-Veniste, that I went with Mr. Vernon Jordan to the home of Vincent Foster and the President was there along with Mack McLarty and others. And the four of us, the President, Mr. McLarty, Mr. Jordan and I, went back to the residence of the White House and spent time there. So I'm not sure I'm the best witness on exactly the mood within the West Wing itself.

Mr. BEN-VENISTE. Then on the day following Mr. Foster's suicide, did you make an observation as to the effect, emotionally and otherwise, that this event had had on the White House?

Mr. GERGEN. It had a devastating impact.

The President himself was grief stricken the night of the death. I can certainly attest to that because Mr. McLarty and I and Mr. Jordan spent, I think, a fair amount of time with him, and he talked a great deal about what happened. But the staff itself was also very shocked. One has to recall that there had not been a suicide in the Executive Branch of our Government since the 1940's. I don't think anybody had ever gone through anything like this.

There were a number of people who felt very close to Mr. Foster, who regarded themselves as personal friends of his from days in Arkansas. So it was extremely important on that day to bring the staff together, which the President did. I believe the President, Mr. McLarty, and Mr. Nussbaum addressed the staff about Vincent Foster, and I think that helped the staff a good deal. But I have to tell you that there was a—I think demoralization is the wrong word—but there was a very powerful sense of grief at that time.

Mr. BEN-VENISTE. Was it such that at some point you even wondered whether it was interfering with the ability to function?

Mr. GERGEN. I must say, I was primarily concerned at the time—I was not a close friend of Mr. Foster's, I barely knew him. I was very strongly concerned about the psychological impact this might have upon the President and upon others who had come with him to Washington, because it had been a rough early months, as you know. I was concerned whether it would be so upsetting to them that they would be embittered about the Washington experience. So that was uppermost in my mind among the concerns we had.

Mr. BEN-VENISTE. Mr. Gergen, you were present on the 20th when the President spoke with Mrs. Clinton; is that correct?

Mr. GERGEN. Yes, sir, that's correct.

Mr. BEN-VENISTE. And there was more than one conversation?

Mr. GERGEN. That's correct.

Mr. BEN-VENISTE. From your ability to overhear the President's side of the conversation, can you tell us whether there was any mention whatsoever about the files in Mr. Foster's office—White-water, the Travel Office, or any such thing?

Mr. GERGEN. Well, at no time in my presence did the President ever discuss any of those issues. He spoke primarily of the—he basically reminisced about the early days of growing up in Arkansas and told stories. I think this was a way for him to deal with his grief. Those kind of issues were just not there. I should add to this that we were in the kitchen in the residence, which is up on the second floor, and he spoke to Mrs. Clinton—not in the kitchen, but he went out to an outer living room area. So it was not possible to overhear those conversations, but I can tell you that in our presence those issues never came up.

Mr. BEN-VENISTE. Thank you, sir.

Now, Mr. Burton, in all fairness to you, sir, in terms of the interview of you by the FBI, were you specifically asked to name each and every person who saw Mr. Foster's torn-up note?

Mr. BURTON. No, sir, I was not.

Mr. BEN-VENISTE. Mr. Chairman, if I may, the observation I was going to make with respect to A139 and the following pages, and particularly A140, which were the handwritten notes of Agent Salt-er interviewing Mr. Neuwirth, I would note that on A140, the ques-

tion seemed to be asked who touched the note. I'll read the line that I think sets that forth. It says, "Note touched by BN, SN, and maybe BB." So I think the implication that someone was asked about everyone who saw the note may be an unfair implication under these circumstances.

The CHAIRMAN. I ask that the entire note be put in the record because I think it's important that we read it in context in its entirety. So, Mr. Ben-Veniste, on our time, I'm going to ask Mr. Chertoff to address that because I think you have to read the entire paragraph.

Mr. BEN-VENISTE. Well——

The CHAIRMAN. In other words, just to take it one sentence—I don't want to impinge on your time, but I think you have to read the entire paragraph and the entire note.

Mr. BEN-VENISTE. I understand that. But, Mr. Chairman, the point I'm making is sometimes it's difficult to tell at some point later—and in this case 2 years later—what specific question was asked. And I might point out Mr. Burton was questioned at considerable length in his deposition by Majority Counsel, but Majority Counsel never asked Mr. Burton all the people who saw the note.

Mr. Burton, is it your recollection that after the conclusion of Majority Counsel's questioning, that you had been asked any question that would have elicited that the First Lady had been shown the note?

Mr. BURTON. I take the oath seriously, sir, and did not respond that way to Majority Counsel's questions; so no, he wouldn't have asked me a question that that was responsive to.

Mr. BEN-VENISTE. Indeed, my recollection is that when Minority Counsel was questioning you thereafter, a question was asked that then elicited a response that the First Lady had come in and seen the note, and you so testified; is that correct?

Mr. BURTON. That's correct.

Mr. BEN-VENISTE. Let me go to another issue that perhaps ought to be cleared up in fairness to Mr. McLarty. A statement was made that on July 22 the White House records reflect that a 7-minute call was made to Mr. McLarty's office. According to the records that I had received that set forth that telephone call, it reflects that it was a 3-minute call, so perhaps we can clear that up. I have here the cellular phone message from Ms. Thomases' phone records——

The CHAIRMAN. I think there are a number of phone calls there which were alluded to, one for 3 minutes, another one at 10:48 for 7 minutes, the one at 11:11 for 3 minutes and the one at 11:16 for 1 minute.

Mr. BEN-VENISTE. Unfortunately, Mr. Chairman, what you're reading from is a summary, and I don't know who compiled that summary, but I'm looking at the original record and perhaps there was a mistake because the call above that is 7 minutes. The call below that, which is the call to Mr. McLarty's office, is 3 minutes.

The CHAIRMAN. We will note that for the record, we will put in the official logs, which we received from the White House to indicate the length of them.

Mr. BEN-VENISTE. Mr. Quinn, let me focus on the issues as you saw them, sir, as they were presented to you on July 22. I take it that you were asked to provide some counsel and guidance in a

conference with Mr. Nussbaum in the late morning that day; is that correct, sir?

Mr. QUINN. That's correct. It was sometime in the morning. I don't recall. It could be midmorning to late morning. I don't recall the time.

Mr. BEN-VENISTE. Who was present at that meeting, to your recollection?

Mr. QUINN. To the best of my recollection, in addition to myself and Mr. Nussbaum, I believe Steve Neuwirth was present. I believe Bill Burton was present, and I have testified that it may be that Bruce Lindsey was also present. It's possible that one or two others were, I just don't recall.

Mr. BEN-VENISTE. As you understood it, were there competing interests involved in the question of what the Park Police wanted to review and what the obligations were of the White House Counsel's Office?

Mr. QUINN. There were.

Mr. BEN-VENISTE. Would you be kind enough to explain, as you saw the issue then, how you analyzed the legal rights involved?

Mr. QUINN. I would. It was my view at the time, and it remains my view today, that prior to the search of Mr. Foster's office by the Park Police it was incumbent upon Mr. Nussbaum or some other appropriate person from the Counsel's Office to undertake a preliminary review in order to determine whether there were sensitive, privileged, or classified materials that required protection.

Mr. BEN-VENISTE. Did you have in mind at that point or did anyone advise you that the interests of the Park Police, as that interest was expressed to White House Counsel, was to search for a suicide note or some similar type of writing which might explain Mr. Foster's mental or emotional condition or—in sort of far out hypothetical—any sort of blackmail or other extortion note that might be in his records?

Mr. QUINN. I do not recall explicitly discussing that with others in the room. However, there's no doubt in my mind that the operating assumption was that what was being looked for was a suicide note or some other indication as to why Mr. Foster took his life.

Mr. BEN-VENISTE. So you understood that the basis of the request, the scope of what was being searched for was extremely narrow?

Mr. QUINN. That's correct and—

Mr. BEN-VENISTE. In your analysis, did you reach a conclusion about whether on the 22nd, the Park Police, or anyone outside the White House staff for that matter, should be permitted entry into Mr. Foster's office?

Mr. QUINN. I did. I reached my own conclusion.

Mr. BEN-VENISTE. And what was that, sir?

Mr. QUINN. I wanted to be sure that someone with the appropriate level of security clearance and who was privy to the attorney-client relationship first went through the office in order to ascertain if national security materials or privileged communications were present and, if so, to take steps to segregate them.

I wanted to be sure that this search, in other words, was carried out in a way that furthered the legitimate aim of the investigation to find evidence as to why Mr. Foster might have taken his life

while at the same time fulfilling the legal and ethical obligations that I believed then, and continue to believe, Mr. Nussbaum had to his client and, frankly, to the Nation. Those obligations, no doubt, included the important obligation of helping the authorities to discover any suicide note.

But as far as I'm concerned, Mr. Nussbaum had additional obligations as well. He had an obligation to preserve confidences that might be revealed to him by his various clients within the Executive Office of the President and he had an obligation to preserve and protect any national security secrets that might have had real bearing on the well-being of the Nation that might have been in Mr. Foster's office. As far as I was concerned, these obligations simply were more important than the need to maintain good appearances.

Mr. BEN-VENISTE. Did you convey to Mr. Nussbaum, in words or substance, your view that at that point, that in any event, the Park Police and whatever other authorities were looking into the question of Mr. Foster's death should not be permitted access to Mr. Foster's office?

Mr. QUINN. I would like to rephrase it, if I could. I expressed to him in forceful terms my view that before anyone searched the office who might neither have the appropriate level of security clearance, nor be privy to the privilege in question, that a review of the office be undertaken by someone who satisfied both conditions.

Mr. BEN-VENISTE. So extrapolating from that the bottom line, it was—at this point, anyway—that the Park Police and whoever else ought not to be granted admittance to Mr. Foster's office?

Mr. QUINN. At that point in time, that's correct.

Mr. BEN-VENISTE. Did Mr. Nussbaum convey to you the fact that the Park Police were already uneasy about the amount of time that had gone by and were quite anxious to review Mr. Foster's files?

Mr. QUINN. I don't recall specifically having been advised. The Park Police were anxious about undertaking this. I certainly do recall Mr. Nussbaum being quite resistant to my counsel on this score.

Mr. BEN-VENISTE. What did Mr. Nussbaum argue?

Mr. QUINN. Again, I would be wrong to put words in his mouth because I just don't recall exactly what he said. But he did argue to the effect that he wouldn't be able to persuade the investigators to wait and to follow the course I recommended.

Mr. BEN-VENISTE. Did he say in substance—again, I don't want to put words in your mouth or his—but my sense of it is he said he had come up with some kind of a procedure that he thought balanced the interest of law enforcement with those that you have articulated?

Mr. QUINN. Well, eventually he did. And again, it's entirely possible. My memory is faulty. I don't think so. I believe that that procedure was one that emerged or developed during the course of our meeting, and I say that because it was very much my impression at the beginning of that meeting that he intended later that morning or later in the day to permit unfettered access to the office. It was only during the course of the meeting that he indicated he might approach this in a different fashion, specifically by being present in the room with the investigators and reviewing the docu-

ments himself and providing to them simply an oral description of the documents.

Mr. BEN-VENISTE. Was that how matters were left?

Mr. QUINN. It was my impression at the conclusion of our discussion that that's how he intended to proceed.

Mr. BEN-VENISTE. Mr. Burton, you were present, at least, for a substantial portion during the time that Mr. Nussbaum executed the procedure that has been described; correct?

Mr. BURTON. Yes, sir.

Mr. BEN-VENISTE. At that time you were present in the room when Mr. Nussbaum removed materials from Mr. Foster's briefcase; correct?

Mr. BURTON. Yes, sir.

Mr. BEN-VENISTE. Where were you standing at the time?

Mr. BURTON. I was standing to Mr. Nussbaum's right and slightly behind him.

Mr. BEN-VENISTE. Did you observe whether or not Mr. Nussbaum at any time raised the briefcase and placed it on the desk?

Mr. BURTON. I do not recall him doing that, no, sir.

Mr. BEN-VENISTE. Do you recall that he reached down and removed the files from the briefcase while the briefcase was on the floor at his side?

Mr. BURTON. I do remember that, yes, sir.

Mr. BEN-VENISTE. Do you remember whether it was at the side closest to you or whether it was on the other side of Mr. Nussbaum?

Mr. BURTON. My recollection is it was on my side.

Mr. BEN-VENISTE. So if you were facing the desk and facing Mr. Nussbaum, it would be to Mr. Nussbaum's right?

Mr. BURTON. It was to Mr. Nussbaum's right. If you were facing the desk, it would be to your left.

Mr. BEN-VENISTE. To the left of the desk. So it was to the left side of Mr. Nussbaum as he did this?

Mr. BURTON. No, I apologize.

Mr. BEN-VENISTE. To the right side of Mr. Nussbaum. He used his right hand to remove the files?

Mr. BURTON. I don't remember which hand he used. The briefcase was on his right side and kind of in front of me.

Mr. BEN-VENISTE. Then when he finished removing the files from it, what did he do with it?

Mr. BURTON. My recollection is he moved it so that he could get to the files in the desk.

Mr. BEN-VENISTE. Where did he move it?

Mr. BURTON. Either—probably to the wall behind him because the desk, as I remember it, is kind of up against the wall. The credenza is to the side. The office is kind of odd shaped.

Mr. BEN-VENISTE. I want to come back to that in a moment, but I want to make sure that I cover one point, and that is this issue after the note was discovered on July 26 about whether there was some executive privilege that attached to the note and some assignment of research with respect to that. Do you recall that?

Mr. BURTON. I recall generally an issue of privilege came up with respect to the note in that it was my understanding that Counsel's

Office was going to look to see if there was anything in the note that gave rise to privilege.

Mr. BEN-VENISTE. At this point, there are only two people from Counsel's Office who were in the picture. Mr. Nussbaum and Mr. Neuwirth; correct?

Mr. BURTON. Yes, sir.

Mr. BEN-VENISTE. Your background is as a lawyer, but obviously you were not under Mr. Nussbaum's jurisdiction; correct?

Mr. BURTON. I did not function in the White House as a lawyer, no, sir.

Mr. BEN-VENISTE. Who raised the issue of executive privilege?

Mr. BURTON. During the discussion, an issue of whether there were any privileges that attach to any of the lines in the note came up. I do not recall who raised it.

Mr. BEN-VENISTE. I have to tell you that among the various issues I have heard discussed in this hearing, this has got to be the looniest issue at this point that there might be some privilege attaching to this note after all of the problems associated with finding, and I have heard the discussion about doing this research, but I haven't heard who is the author of the suggestion to do this research. Do you have a recollection?

Mr. BURTON. I do not. It would have been one of the three of us and very possibly it could have been me. My only defense is that I didn't limit it to—if I raised it, it wasn't just executive privilege. It would have been whether there was some attorney-client privilege.

Mr. BEN-VENISTE. So you think you may have raised it?

Mr. BURTON. I certainly well may have.

Mr. BEN-VENISTE. I'm pleased with that because it seemed to be an orphan, and I'm glad somebody has claimed paternity even if the ideal is not a good one. Was it ever seriously considered, Mr. Burton, that this note would not be turned over to law enforcement?

Mr. BURTON. It was never considered seriously or trivially or any other way that the note would not be turned over. From the time the note was found, certainly from the time I knew of the existence of the note, that was never in doubt.

Mr. BEN-VENISTE. Mr. Chairman, I have just received another diagram. As you will recall last week, we were trying to get a better scaled version, and perhaps I could hand this out and ask that this be marked as a hearing exhibit and put up on our screen.

Mr. Burton, can you see that?

Mr. BURTON. I can.

Mr. BEN-VENISTE. Does this appear to be the layout of Mr. Foster's office?

Mr. BURTON. Yes, sir.

Mr. BEN-VENISTE. Maybe we could put up the last version of that where we had Mr. Margolis and Mr. Adams placed. If we can get some idea of absolutely where people—

The CHAIRMAN. Can I ask, who prepared this?

Mr. BEN-VENISTE. I understand that someone at the White House took these dimensions down and furnished it to us this morning pursuant to our request.

The CHAIRMAN. All right.

Mr. BEN-VENISTE. So I guess if we were to then transpose those two chairs to what should be marked as Hearing Exhibit 1 of this date, we would have some better idea of who sat where. If we could do that, just put those two X's for Margolis and Adams on Hearing Exhibit 1 of this date, then we'll have things in a little better scale. Obviously, those chairs should be quite a bit larger.

Mr. BURTON, where were you standing?

Mr. BURTON. I'm going to describe it from where it is to me. It was on the left-hand side in the room behind the desk, approximately there, a little closer to where the occupant of the desk would be sitting and back a little bit.

Mr. BEN-VENISTE. Is that right?

Mr. BURTON. Maybe a little closer to the credenza. That's approximately where I was.

Mr. BEN-VENISTE. If we could put an X there for Mr. Burton, then we'll have a record of that. Where do you recollect the briefcase was when Mr. Nussbaum looked in it? Can we move the dot again? Mr. Burton, you tell us where the briefcase was.

Mr. BURTON. Approximately where the end of that arrow is, that's where I recall the briefcase to be.

Mr. BEN-VENISTE. Let's put a circle there and a notation. Let's fill in the circle as being the briefcase. Thank you, sir.

Now, the following day, Mr. Burton, were you involved in discussions about the procedure of how this note would be turned over?

Mr. BURTON. What date are you referring to?

Mr. BEN-VENISTE. The 27th. You will recall that Mrs. Foster came to the White House at about 5:00 p.m. She was en route from Arkansas from having stayed that time for the funeral until the 27th. Do you recall having learned that?

Mr. BURTON. I recall having learned that Mrs. Foster did not get a chance to get to the White House to see the note until that afternoon. I don't remember what time.

Mr. BEN-VENISTE. Were you present when Mrs. Foster was shown the note?

Mr. BURTON. I was not.

Mr. BEN-VENISTE. Were you present when Mr. Nussbaum met with Attorney General Reno and Mr. Heymann?

Mr. BURTON. Yes, sir.

Mr. BEN-VENISTE. At that point, let me ask you, this is a matter that's somewhat troublesome. When you saw the note assembled on the 26th, on the desk in Mr. Nussbaum's office——

Mr. BURTON. Yes, sir.

Mr. BEN-VENISTE. Did it appear to be missing a piece?

Mr. BURTON. I do not recall that, no, sir.

Mr. BEN-VENISTE. On the 27th, was it reassembled again in the presence of Mr. Heymann?

Mr. BURTON. In the presence of Mr. Heymann, for the Park Police officer who had come to the White House to retrieve the note, it was put together.

Mr. BEN-VENISTE. It was there on a conference table on the First Floor?

Mr. BURTON. In Mr. McLarty's office, correct.

Mr. BEN-VENISTE. Did you note whether there was a piece missing of the note at that time?

Mr. BURTON. No, I did not.

Mr. BEN-VENISTE. Did anyone comment in your presence about whether a piece was missing from the note on the 27th when Mr. Heymann and the gentleman from the Park Police—do you recall his name?

Mr. BURTON. I do not.

Mr. BEN-VENISTE. Hang on for a second.

When Officer Megby—does that refresh your recollection—from the Park Police?

Mr. BURTON. The name does ring a bell now.

Mr. BEN-VENISTE. When Officer Megby reviewed the reassembled note in Mr. Heymann's presence, do you recall whether anyone mentioned that a piece of the note was missing?

Mr. BURTON. Nobody said anything about that.

Mr. BEN-VENISTE. Mr. Chairman, I would only note with respect to Officer Megby's report of that incident, there is no mention of a piece of the note being missing. And at this point, I see my time is up. Thank you.

The CHAIRMAN. Is the officer's report part of the record? If we want to include that, why don't we do that now.

Mr. BEN-VENISTE. Very well.

The CHAIRMAN. We will include that in the record.

Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Mr. McLarty, you were Chief of Staff for President Clinton at the time Vince Foster died; is that correct?

Mr. McLARTY. That is correct, Senator.

Senator FAIRCLOTH. Could you tell me some of the specific duties the position of Chief of Staff is responsible for?

Mr. McLARTY. To organize and manage the White House in its activities and also to assimilate information for the President to present to him in a timely manner to make decisions, and that would include written information as well as other meetings where direct communication could occur for decisionmaking.

Senator FAIRCLOTH. Whose job is it to supervise the Counsel's Office?

Mr. McLARTY. The Counsel's Office reports to the Chief of Staff's Office and has a fiduciary responsibility to the President.

Senator FAIRCLOTH. So at this point, you were Mr. Nussbaum's supervisor?

Mr. McLARTY. Yes, that's correct.

Senator FAIRCLOTH. In the position of Chief of Staff, would it be your responsibility to make sure that the personal business of the President gets taken care of, bills, taxes, legal matters of that sort?

Mr. McLARTY. No, that would not come under my responsibility, Senator, I don't believe.

Senator FAIRCLOTH. Did you know that Vince Foster was working on personal business for the President?

Mr. McLARTY. No, I did not.

Senator FAIRCLOTH. You didn't know that he was working on—

Mr. McLARTY. No, I did not know Mr. Foster was working on personal matters.

Senator FAIRCLOTH. Do you consider the practice of using a Deputy Counsel to the President, in this case Mr. Foster, for personal business—would that be a conflict of interest?

Mr. McLARTY. Well, Senator, I don't know what Mr. Foster was working on specifically. As you know, the President's records and activities—in terms of disclosure forms and other things of this nature, the President's affairs are very public and sometimes there's not a very clear line of distinction and indeed, some of what you're suggesting are personal activities, like tax returns, disclosures and so forth, would be a matter of public record.

Senator FAIRCLOTH. I have a little problem with the fact that the taxpayers were paying for a personal attorney, but——

Mr. McLARTY. Senator, I don't know that that's the case at all here.

Senator FAIRCLOTH. The testimony has been that he was handling taxes and records and that but, anyway——

Mr. McLARTY. Senator, I don't want to be at all—just let me clarify. I think again, I don't know whether Mr. Foster worked on the matters that you're referring to on White House time or not, but many of those matters, it seems to me, on disclosure forms and so forth, would come under appropriate work in the White House Counsel's Office.

Senator FAIRCLOTH. On the evening of Mr. Foster's death, how many times did you speak to the First Lady?

Mr. McLARTY. I believe I talked to her only once, Senator. I may have talked to her twice, I am not sure. The first time that I called her, which may have been the only time, I was not certain that the body that had been found was Mr. Foster, and I think I told the First Lady I would keep her apprised as events unfolded, but I do not recall placing a second telephone call to her.

Senator FAIRCLOTH. Were you the first person to inform the First Lady of Mr. Foster's death?

Mr. McLARTY. To the best of my knowledge, I was, yes, sir.

Senator FAIRCLOTH. What time did you call her?

Mr. McLARTY. It was sometime after 9:00 p.m., between probably 9:15 and 9:30 a.m., somewhere in that time frame, Senator. I'm not sure precisely.

Senator FAIRCLOTH. Was she on the plane?

Mr. McLARTY. No, she was not.

Senator FAIRCLOTH. She was not on the plane?

Mr. McLARTY. It was not my impression that she was on the plane. I think the White House operator, Senator, actually placed the call. It was my understanding she was in Arkansas visiting her mother there, and it was not my impression she was on a plane. Generally, you can tell if someone is on a plane.

Senator FAIRCLOTH. Would you mind telling me what occurred in that conversation?

Mr. McLARTY. Yes, I'll be glad to. When the White House operator placed a call and rang me to be on the line, I think Mrs. Clinton's Press Secretary, Lisa Caputo, actually answered the phone and I immediately said, "Lisa, I need to speak to Hillary." I was very direct in that regard, and I informed Mrs. Clinton of the information I had, and that is a body had been found that appeared to be Mr. Foster's and an apparent suicide.

Senator FAIRCLOTH. Did she tell you that she was going to call Maggie Williams?

Mr. McLARTY. No, she did not tell me she was going to call anyone.

Senator FAIRCLOTH. Is there a system that would tape-record or monitor calls made between the White House and the First Lady's plane?

Mr. McLARTY. Not to my knowledge, Senator.

Senator FAIRCLOTH. There is no system of monitoring of those calls?

Mr. McLARTY. Senator, not to my knowledge. I do not believe there is.

Senator FAIRCLOTH. Who would have that knowledge?

Mr. McLARTY. I think I would have to do some research on that, Senator. The military office might, I simply don't know.

Senator FAIRCLOTH. Is there any system managed by the White House or the communications agency—you don't know whether there's any control of those calls or whether there's any agency that knows records, monitors the call?

Mr. McLARTY. Well, Senator, it would come under the communications arm, not the press arm but the communications arm. I'm not aware of any taping of the calls. Certainly there's control of the calls in terms of placing them and so forth.

Senator FAIRCLOTH. Do you know if the White House communication agency switchboard, commonly called Signal, has provided all of the outgoing or incoming telephone calls from all of the relevant individuals or White House department telephones to this Committee?

Mr. McLARTY. Senator, I'm not sure what the specific procedures of Signal are.

Senator FAIRCLOTH. Has the White House administrative switchboard provided a copy of all outgoing calls? You wouldn't know that either?

Mr. McLARTY. Senator, not without some checking into the matter or reviewing it, I would not know.

Senator FAIRCLOTH. Have you been asked to provide all of your phone records to the Committee?

Mr. McLARTY. I've tried to comply fully with any request made not only of phone records but any other information that I've been asked to provide.

Senator FAIRCLOTH. Have you, Mr. Quinn? Have you been asked to provide your phone records?

Mr. QUINN. I believe we were, Senator.

Senator FAIRCLOTH. Mr. McLarty, when you informed the President, he called the First Lady; is that correct?

Mr. McLARTY. He did, yes, sir.

Senator FAIRCLOTH. Were you present when this call was made?

Mr. McLARTY. I was on the second floor of the residence with him. I was not in the room where he placed the call.

Senator FAIRCLOTH. Again, you don't know whether she was on the plane or in Little Rock?

Mr. McLARTY. Senator, it was certainly my impression she was in Little Rock and not on an airplane, both when I placed the call and when the President placed the call.

The CHAIRMAN. Senator, would you yield just for a moment for a question?

Senator FAIRCLOTH. Sure.

The CHAIRMAN. Or an observation. Mr. McLarty, is it your impression that when you contacted the First Lady, that this was the first that she had learned of it?

Mr. MCLARTY. Yes, it was, Mr. Chairman.

The CHAIRMAN. In other words, she hadn't learned of it before?

Mr. MCLARTY. That clearly was my impression.

The CHAIRMAN. This is why I think there is some confusion. In previous testimony, sometime after the First Lady learned of the death of Vince Foster, she reached out to Maggie Williams. This comes from the testimony of Ms. Williams, who is the First Lady's, I guess, Chief of Staff.

Mr. MCLARTY. That's correct.

The CHAIRMAN. It is Maggie Williams' specific testimony that that first phone call came from the First Lady while the First Lady was on an airplane, because the First Lady said specifically stay where you are, I'm on the plane and when it lands, I will call you back again. Consequently, it would lead us to believe reasonably that when you did contact her—and, obviously, you're not aware—that she was on the plane.

When the Senator asked you where was she, you said your impression was she was in Little Rock. But we have reason to believe—and you, obviously, weren't aware of these details—that, indeed, she was on the plane because it was thereafter—if you were the first to inform her, and you would know that she hadn't heard about that, obviously from the exchange, she then called Maggie Williams from the plane because she specifically—so your call necessarily would have been—

I'm going to ask to give the Senator an additional 2 minutes because I interrupted him, and I thank the Senator.

Mr. MCLARTY. Mr. Chairman, your explanation is helpful.

The CHAIRMAN. Senator Faircloth.

Senator FAIRCLOTH. Later that evening, when you went to the Foster house, did David Watkins tell you that he had sent Patsy Thomasson to Mr. Foster's office?

Mr. MCLARTY. No, I don't believe he did, Senator.

Senator FAIRCLOTH. He didn't tell you?

Mr. MCLARTY. No—excuse me.

Senator FAIRCLOTH. Are you aware of Ms. Thomasson's background? Did you know that she worked for Dan Lasater for 10 years?

Mr. MCLARTY. I knew she worked for Mr. Lasater.

Senator FAIRCLOTH. Of course you knew of his conviction of drug dealing and that sort of thing?

Mr. MCLARTY. I was aware of that as well as some of his business endeavors which had been successful.

Senator FAIRCLOTH. Do you know Dan Lasater personally?

Mr. MCLARTY. I'm acquainted with Mr. Lasater.

Senator FAIRCLOTH. Were you Chief of Staff when Ms. Thomasson was hired?

Mr. MCLARTY. Yes, I was.

Senator FAIRCLOTH. Did you approve the hiring of Ms. Patsy Thomasson?

Senator DODD. Mr. Chairman, we've been down this road once before.

Senator FAIRCLOTH. Let's go again.

The CHAIRMAN. I'm going to let the Senator continue.

Senator FAIRCLOTH. Did you approve the hiring of Ms. Patsy Thomasson?

Mr. McLARTY. Mr. Watkins informed me he had hired Ms. Thomasson, and in that sense, yes, I approved it.

Senator FAIRCLOTH. Did you think it appropriate to hire her and someone with her past connections?

Mr. McLARTY. Senator, I think in fairness to Ms. Thomasson, she was a person of experience. She had worked for Chairman Wilbur Mills here in Washington. She had been appointed to the Arkansas Highway Commission, as I remember it, by then-Governor David Pryor, and that's a very important position in our State, and in most States, and she had discharged those responsibilities well. I think she was chairman of the Highway Commission, if I'm not mistaken.

As I noted, to provide just a bit of context, while I did not and do not know Mr. Lasater well, he had been very successful, at least as I understood it, in a number of business ventures. So the fact that she was involved in his companies, I don't think that should be a preclusion from serving in Government or other career endeavors.

Senator FAIRCLOTH. Did you ever discuss her hiring with the President or the First Lady?

Mr. McLARTY. No, I don't recall that I did, Senator. I don't believe that I did.

Senator FAIRCLOTH. Just one question here. After Mr. Foster's death, did you ever discuss the search of Mr. Foster's office with any of the following people, and if so, what was the nature of the conversation—President Clinton?

Mr. McLARTY. No, I don't believe I have ever discussed the search of Mr. Foster's office with the President.

Senator FAIRCLOTH. Mrs. Clinton?

Mr. McLARTY. No, I have not.

Senator FAIRCLOTH. Susan Thomases?

Mr. McLARTY. No.

Senator FAIRCLOTH. You've never discussed it with her?

Mr. McLARTY. No, I have not.

Senator FAIRCLOTH. Maggie Williams?

Mr. McLARTY. I don't recall that I discussed it with Maggie, no.

Senator FAIRCLOTH. Mr. Nussbaum?

Mr. McLARTY. No, I don't recall I discussed it with Mr. Nussbaum.

Senator FAIRCLOTH. Mr. Kennedy?

Mr. McLARTY. I'm sorry?

Senator FAIRCLOTH. Mr. Kennedy, William Kennedy?

Mr. McLARTY. No, I have not discussed it with Mr. Kennedy.

Senator FAIRCLOTH. Patsy Thomasson?

Mr. McLARTY. No, I do not think I have discussed it with Ms. Thomasson.

Senator FAIRCLOTH. Thank you, Mr. McLarty. I see my time has expired.

The CHAIRMAN. Thank you, Senator.

Senator SARBANES.

Senator SARBANES. Was that question after the search did he discuss it with any of these people?

Senator FAIRCLOTH. Did you discuss the search of Mr. Foster's office with any of the following people?

Senator SARBANES. You mean the search that took place?

Senator FAIRCLOTH. The search that took place, yes.

Mr. MCLARTY. Senator, when you say "the search," what are you referring to there?

Senator FAIRCLOTH. What went on, how it was arranged, who searched it, the different people that were in and out, beginning with Maggie Williams and moving on through Mr. Nussbaum and the different people that searched the office, how it was handled.

Mr. MCLARTY. I saw Mr. Nussbaum the next morning after Mr. Foster's suicide, and we had a brief exchange that he would be responsible for those types of matters. I don't recall discussing anything about the search of the office, however.

Senator FAIRCLOTH. You did discuss that Patsy Thomasson had been in there the night before and Maggie Williams, and that sort of thing was never discussed with you?

Mr. MCLARTY. I don't recall a discussion of that, no, sir.

Senator FAIRCLOTH. All right. Thank you.

Senator SARBANES. I yield to Senator Dodd.

The CHAIRMAN. Senator Dodd.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Thank you, Mr. Chairman. If I could, just a couple of points. You've sort of answered this, all four of you, one way or another over the last hour or so, but I would like to begin with you, Mr. McLarty, because you knew Vince Foster virtually from the time you were both infants almost; is that correct?

Mr. MCLARTY. That is correct. We grew up together.

Senator DODD. So literally from the time you were in kindergarten; is that correct?

Mr. MCLARTY. That's correct. Vince was a year older.

Senator DODD. Along with the President, roughly the same time?

Mr. MCLARTY. Roughly the same time. The President moved to Hot Springs when he was 7 and, of course, Vince and I attended junior high and high school together.

Senator DODD. Suffice it to say the President, Mr. Foster, and yourself had known each other all your lives?

Mr. MCLARTY. That's a correct statement.

Senator DODD. Mr. Burton, you're from Hope, Arkansas as well, aren't you?

Mr. BURTON. I lived in Hope for about 8 years as an adult.

Senator DODD. You worked while you were in law school, do I understand it correctly, at least part, with the Rose Law Firm?

Mr. BURTON. I think for three semesters while I was in law school I clerked there part-time.

Senator DODD. You were hired by Mr. Foster, is he the one that asked you to come to work for the law firm?

Mr. BURTON. Yes, I arranged my employment through Mr. Foster. I think technically, the hiring partner was a different recruiting partner but I don't remember who that was.

Senator DODD. Did your family know Mr. Foster growing up around Hope, Arkansas?

Mr. BURTON. I grew up in Texarkana, which was 30 miles from Hope. I did not meet the Foster family until I was a young adult and living in Hope. I met Mr. Foster's family there and knew his family well.

Senator DODD. But you've known him for a long time?

Mr. BURTON. Yes, sir.

Senator DODD. I believe that is to background because I believe that's important here. We're not talking about someone who no one knew who had joined this White House team in January 1993. I gather, Mr. Quinn, you had not known Mr. Foster before; is that correct?

Mr. QUINN. I met him for the first time during the transition.

Senator DODD. Mr. Gergen?

Mr. GERGEN. I did not know him before.

Senator DODD. But for the First Family and for several people at the White House, this is a longstanding more of a personal relationship than a professional one in many ways; is that not correct?

Mr. McLARTY. That's fair from my standpoint, Senator Dodd.

Senator DODD. During the last hour or so you've been asked this and others have been, but I think it helps us a bit because as we look at these time sequences and conversations and so forth, I for one feel it's very important for this Committee and for the public generally to appreciate—try and understand the mood. When you have a death, but a death that's caused by someone taking their own life, there are dimensions to that kind of an event which transcends even a violent death, an unexpected death by someone.

I think most people can relate to that, even if it has not occurred to them in a direct way with a family member or someone close to them. I think there's an appreciation of that on the part of most people and as we look at these decisions and go back today more than 2 years ago now and try and recall moment by moment, conversation by conversation, it's difficult. It would be difficult under any circumstances. But I would like the four of you, because you were all there, you were all involved in the White House during those hours, to take a minute or so, and I'll begin with you, Mr. McLarty, to give us a sense of this. What was it like that night virtually, I guess, as the President is doing a TV interview and over the next several days? What was the mood of this White House?

Mr. McLARTY. Well, Senator, first, I think we were all shocked when we heard this news, as you would expect, a tremendous sense of loss, sadness, and grief not only about the loss of Vince, but for the family. Not just for Lisa, as difficult as that was, but for his children and mother, whom I knew quite well, and a personal loss of a good friend and someone who I had not worked with until we came to Washington but whose counsel had meant a great deal to me and, more importantly, to the President and to the country.

Those were the kinds of thoughts that I think occurred to me and to everyone else in the White House. Again, there would be some difference given the longstanding friendship that I had with Vince

and there were certainly reflections on my part about times growing up in Hope and junior high and high school when we were on the Hope High School Student Council together, those kinds of recollections.

Senator DODD. So that night of July 20 as you went to the Foster home, the President was there, an emotionally charged evening to put it mildly; is that correct?

Mr. McLARTY. It was. Senator Pryor and Barbara were there, and they were understandably emotional. They were good friends not only of Vince Foster and his wife, but also of his two sisters who were there, Sheila Anthony, who is married to Beryl Anthony, and Sharon Bowman. So it was emotionally charged and a time of shock and sadness and grief and we were trying to provide condolences to the best of our human ability.

Senator DODD. The next day, I gather the President, maybe at your suggestion, Mr. Gergen, I'm not sure, but I believe it was at your suggestion, addressed the White House staff because you felt it was important, given the mood at the White House that the President ought to bring them together at a moment like this. Can you describe that a bit for us, the following morning?

Mr. GERGEN. Senator, I think it's important to see it in context. Two things; as you know, I was fairly new to the White House, but what I found there was a young staff that was struggling to find its sea legs. But more importantly, it had been a rough first 6 months, and I think particularly for those coming in new to Washington, the death of Vince Foster was almost like the bottom dropping out. The preoccupation I found during that time was with grief rather than with the kind of process questions that have been—that we focused on here today.

There was just an awful lot of feeling about what kind of city this is and what would prompt someone who was so—who had such a promising life and had so many good friends, what would prompt him to take his life. And so there was a—I think that the preoccupation, first of all, was with the grieving, and second, with the question of why someone would do this.

It was very important, I thought, for the President to speak to the staff, to buck them up in effect, to give them a sense of going forward at a time of crisis. It was also my feeling that by him speaking to the staff, it might be a way for him to deal with his own grief, because it was clear that he was very hard struck by this event. I think Mr. McLarty can attest to that from the time we spent with the President that evening of the 20th. So I found far more than almost any event—and, as you may know, I've been in the White House for other crises—this had such a personal nature to it. It was not a public policy kind of crisis. It was far more in the nature of the personal grieving. People were literally crying in hallways. There was a lot of embracing and there was a lot of hugging of people, and I think one could feel, particularly among those who had come from Arkansas, had come fresh to Washington, that this was just a devastating blow after a rough time and so it was really important to address this. I think the President did rally people, Mr. McLarty and Mr. Nussbaum as well, in the gathering in the Old Executive Office Building in room 450.

As you know, the President also addressed the press that day to express himself on the same subject, but it was a very, very tough time, and I think the preoccupation was with the grief.

Senator DODD. Thank you.

Mr. Burton, do you have anything you would like to add to that description?

Mr. BURTON. I would certainly agree with everything both gentlemen said. The Foster family—I was close to him when I was in Hope. A little anecdote you don't probably have time for, but my brother was in a tragic car accident at the time I was in Hope, and he happened to be between jobs—he was working for Union Pacific Railroad but hadn't gone on their medical insurance yet and was in a coma for close to 2 weeks. Mr. Foster's father set up a fund for him. It meant a whole lot to me at the time.

Mr. Foster was somebody that everybody in Arkansas had a tremendous amount of regard for. Any suicide comes as a shock to people. There's not such a thing as a suicide that doesn't shock people. Mr. Foster's suicide you could not have named a person who would be more shocking. My job in the White House the night Mr. Foster killed himself was to notify his oldest friends on earth, Mr. McLarty—I was with Mr. McLarty when he notified the President—and then go back to the office and try and gather information from the Park Police that we needed for that, but at the same time to call back to Hope, Arkansas and to call back to Little Rock.

I remember—while I may not remember every detail of every conversation with the Park Police, I could sit here and almost verbatim describe for you my conversations with Mr. George Frazier, a senior family—a senior father figure, if you will, in Hope, Arkansas, had the insurance company, and talking to him about setting up the procedures whereby he and his wife would get Mr. Foster's—the family preacher and go out to Mr. Foster's elderly mother's home and notify her.

It had been approximately a year since Mr. Foster's own father had passed away, and to tell her that her son, who was the pride of the State, had just killed himself, those were the kind of things I had to deal with that night. I can recall a whole lot of that personal stuff in immense detail, and, you know, I thought that was the most important thing I was doing that night, to make sure that friends and family of Mr. Foster would not hear about this on the radio, would not hear about it on the TV report that morning, and that was the mood of a whole lot of people in the White House. It was shock, but trying to go on and get our job done.

Senator DODD. Mr. Quinn, I want to give you a chance to respond to this as well.

Mr. QUINN. Senator, let me just add that even among those of us who didn't know Mr. Foster from childhood, he was a very well-regarded, well-loved member of the White House staff, and shock and grief were, as you've heard, widespread and deep. Second, as you suggest, there's something, frankly, about a suicide that adds an extra dimension to that shock and grief. And in the case of Vince Foster, as Bill has suggested, people were simply baffled at why this might have happened, and there's just no doubt but that the grieving was widespread and was very, very deep.

Senator DODD. Thank you. Mr. Chairman, I realize the red light is on. I've asked every witness who was at the White House four questions, a yes or no response. Would my colleagues mind if I complete that?

The CHAIRMAN. Yes, please do that and then we'll take a short break for some of the witnesses. When Senator Dodd concludes, there will be a 5-minute recess—and I ask you to hold it to 5 minutes so we can keep it going.

Senator DODD. Let me say I've asked every person who was at the White House these same four questions and I want to ask all four of you the same questions and I do so for the reason I ask the previous question of all of you. There have been obvious implications here that during this time, on the evening of July 20 after Mr. Foster's suicide and thereafter, that there was a corrupt and malicious intent going on here, so the questions I want to ask are very pointed. I'll ask all four of you the same ones.

I'll begin with you, Mr. McLarty. On or after July 20, 1993, the date of Vince Foster's suicide, did anyone ask you or instruct you to destroy any documents from Vince Foster's office?

Mr. McLARTY. No, Senator, they did not.

Senator DODD. Mr. Quinn?

Mr. QUINN. No, sir.

Senator DODD. Mr. Gergen?

Mr. GERGEN. No, sir.

Senator DODD. Mr. Burton?

Mr. BURTON. No, sir.

Senator DODD. On or after July 20, 1993, did you, Mr. McLarty, destroy any documents from Vince Foster's office?

Mr. McLARTY. No, sir.

Senator DODD. Mr. Quinn?

Mr. QUINN. No, sir.

Senator DODD. Mr. Gergen?

Mr. GERGEN. No, sir.

Senator DODD. Mr. Burton?

Mr. BURTON. No, sir.

Senator DODD. On or after July 20, 1993, did anyone ask you or instruct you to conceal from any law enforcement officials any documents from Vince Foster's office, Mr. McLarty?

Mr. McLARTY. No, sir.

Senator DODD. Mr. Quinn?

Mr. QUINN. No, sir.

Senator DODD. Mr. Gergen?

Mr. GERGEN. No, sir.

Senator DODD. Mr. Burton?

Mr. BURTON. No, sir.

Senator DODD. And last, did anyone at any time ask you or instruct you to take any action to impede, obstruct, or otherwise interfere with law enforcement's investigation into Vince Foster's suicide, Mr. McLarty?

Mr. McLARTY. No, Senator.

Senator DODD. Mr. Quinn?

Mr. QUINN. No, sir.

Senator DODD. Mr. Gergen?

Mr. GERGEN. No, sir.

Senator DODD. Mr. Burton?

Mr. BURTON. No, sir.

Senator DODD. I thank all four of you.

Thank you, Mr. Chairman. I appreciate it.

The CHAIRMAN. We will take a 5-minute recess.

[Recess.]

The CHAIRMAN. I see we're waiting for Mr. McLarty. However, we have three other witnesses, and I want to keep this going. Otherwise you'll be here until the late evening, and we'll be here with you. So there's a little self-interest in keeping this moving.

Senator Bennett.

OPENING COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Thank you, Mr. Chairman. I can proceed. Let me start by commenting that I appreciate what the Senator from Kentucky was trying to establish, and I agree that it's difficult for people who were not directly involved to understand what kind of mood this sort of event creates. I have not had to live through a suicide, but I have, in my various experiences, had the responsibility of dealing with death, and notifying people in a religious circumstance of these kinds of situations, and I'm aware of the fact that it causes people to behave in ways that they look back on and are concerned about. Sometimes we can't remember all of that is a very normal and natural response.

At the same time I hope I'm not being insensitive when I say that my observation is that this wears off, that with the passage of time life begins to reassert itself, and people return to the familiar. Sometimes that is a form of therapy if they go back to doing things that they were doing before it happened, almost as if that could make everything right again. So rather than focus on the night of the 20th or even the 21st, I would like to go beyond.

Mr. Burton, you were talking about the 22nd when you saw the bottom of the briefcase, and your testimony of what you saw coincides with that which we've heard before of other witnesses who could see into the briefcase. Ms. Gorham was able to see in the briefcase and see something yellow at the bottom; you talked about a Post-it note, which is yellow.

Yet this is some time before we have any explicit description that anything was found in the bottom of the briefcase. This is troubling to me that there is a time when you can see there—you are now trying to pick up the threads of your life and your job and perform properly in a way to get over the grief, and yet there's a gap for me between the time you and others saw into the briefcase and the time when Mr. Neuwirth stood up and said, putting the briefcase away for storage, this stuff fell out. And this is the first time we had any indication that it was there.

Would you like to comment on that concern? Help me out with that as to what you think the difference is between what you saw on the 22nd and what Mr. Neuwirth testified came out of the briefcase several days later.

Mr. BURTON. Without commenting on any of your comments about the grief period, just on those two facts, I will tell you the briefcase was emptied by Mr. Nussbaum, as far as I was concerned; and by that I mean he took the documents out of the briefcase and

there was litter, if you will, at the bottom of the briefcase. That was my explanation; that was what I saw. There was nothing in me that made me think at the time perhaps we should see if there is a note tucked away in that litter. There was—it was pretty clear to me that Mr. Nussbaum had emptied the briefcase.

When I found out on the Monday subsequent that a writing had been in the briefcase, while I was surprised that a writing had been found and the circumstances basically being kind of happenstance as he was packing away the briefcase to go home, some pieces of paper fluttered out, there was nothing in that circumstance that was inconsistent with my memory. It didn't make me scratch my head and think, hmm, well that sure is different than when I was there because I saw the bottom of the briefcase and——

Senator BENNETT. I'm not suggesting that it was. I am perplexed, and we'll talk to Mr. Nussbaum when he gets here about how he could empty the briefcase and not notice what was there. I find that very perplexing. Let me move on.

Mr. Gergen, you had some conversations with Phil Heymann that I would like to go into and discuss. Once again, picking up from what I said previously, in a previous hearing, let me set the stage for you as to where I am. I don't want to be devious here.

The witnesses we had from the White House Counsel's Office, Mr. Neuwirth and others, have all said everything was according to Hoyle. We were cooperating; we were doing everything right; the appropriate people were doing the appropriate things; and the witnesses we have had from every other agency dealing with this have said unanimously that's not the case. Mr. Collier complained—did Mr. Collier speak to you, Mr. Gergen?

Mr. GERGEN. Senator Bennett, he did speak to me.

Senator BENNETT. Mr. Collier complained on behalf of the Park Police. Mr. Heymann complained on behalf of the Justice Department, and Ms. Gorham and Ms. Tripp complained on behalf of the White House support staff. Ms. Gorham used the specific word—I questioned her about it directly—the appearance was “paranoid” that something was going on here, that people were trying to find out what people outside of the inner circle might have seen. Ms. Gorham testified that Mr. Nussbaum questioned her in an interrogation that was very intense, repeatedly trying to find out what did you see, what did you see.

Now, Mr. Gergen, you have the advantage of not having been that close to the situation. I'm sure you were shocked by the death; I'll stipulate that you're a compassionate man and all of the rest of that, but you, at least, didn't have the lifetime involvements as some of these others. Can you tell us about your conversation with Mr. Heymann with this perception on the part of all of these people outside of the Counsel's Office that the behavior was paranoid or, at best, secretive and challenging?

Mr. GERGEN. Well, to summarize, Senator, I was called by Mr. Collier from the Interior Department; he's Chief of Staff to Secretary Babbitt, and as I recall, I was called by Mr. Heymann. And he, of course, has testified that he called me on, I think it was the day of the 29th. I have not been able in my mind to be precise about when Mr. Collier called me and then came to see me. I be-

lieve it was either on the 28th or 29th. Both of those conversations, of course, occurred after the note was found and turned over to the Park Police. As best I can tell, it stimulated those two calls by both Mr. Heymann and by Mr. Collier.

In both cases, as I recall—and my memory is not precise or perfect on this—both of them expressed displeasure about the way the investigation was being handled by the White House. Mr. Collier was very pointed on that issue. In both instances——

Senator BENNETT. May I interrupt? Mr. Collier is a political appointee, is he not?

Mr. GERGEN. Yes, sir, he is.

Senator BENNETT. So he was appointed by the Clinton Administration?

Mr. GERGEN. That's my understanding, sir.

Senator BENNETT. This is not a career appointee, this is a political appointee of the Clinton Administration who is complaining to you?

Mr. GERGEN. That's correct. Of course Mr. Heymann is also an appointee of the President, confirmed by the Senate.

In both instances they raised serious concerns on their part, on behalf of their institutions, about the—I guess one could say that they thought that the White House was dragging its feet in the cooperation and that they were not pleased with the response. In both instances I did go to Mr. McLarty, and I must tell you that after talking to Mr. McLarty I then got a call back from Mr. Collier saying that things were moving along much more promptly and they were pleased about that. I assume from that, and I believe to be true, that Mr. McLarty had acted, had stepped into the situation, in the week of the 28th, 29th.

Now, I don't have a precise memory of my conversation with Mr. Heymann. He refreshed my recollection through his testimony a few days ago, but as I recall, he and I had more than one conversation. But I think they started that second week, the week after the death—after the note was found. He came to me to express a great deal of concern, and I think we had a conference call in which he told us that the FBI was going to be conducting an investigation to clear the record about how the note was handled. And that investigation, of course, did occur. But again, I did talk to Mr. McLarty. My impression from Mr. Heymann in a subsequent conversation was that he felt after Mr. McLarty stepped into it, that things had gotten a lot better.

Senator BENNETT. Thank you.

Mr. McLarty, do you track with that description that you received the call from Mr. Gergen and then got into it?

Mr. McLARTY. I generally track with it, Senator. What I recall clearly is Mr. Gergen noting to me—and I believe about the time frame he is suggesting Mr. Collier's concern. If my memory serves me correctly, and I think it does, I did visit with Mr. Nussbaum when that concern had been brought to my attention. That was really the first time that I remember being told that things were not moving in an orderly and satisfactory manner.

Senator BENNETT. All right. This is the first time you remember being told. Who told you prior to that time how things were moving? Was it exclusively Mr. Nussbaum?

Mr. McLARTY. It would have been primarily Mr. Nussbaum. Mr. Burton might have made some comments, but Mr. Nussbaum gave me the impression things were moving in an orderly and satisfactory way. There were a lot of issues that he was dealing with.

Senator BENNETT. I understand that. So all of the information you were getting as the Chief of Staff in the White House was coming from Mr. Nussbaum, who was, in fact, in charge of everything that was going on until you got the call from Mr. Gergen saying there are some other people who are not happy with the way things are going. Is that a correct characterization of the time frame?

Mr. McLARTY. Well, Mr. Nussbaum would have been the principal person that I would have been receiving information from because most of these matters were under the purview of the White House Counsel's Office. Senator Bennett, there were a lot of other affairs occurring in the White House, and despite the grief, as I said, you made a conscious effort to try to detach yourself as much as you could to keep the other business and affairs of state moving forward, as I've already noted. And not to micromanage this situation, but I believe it was when Mr. Gergen told me that Mr. Collier expressed some concern was the first time that that type of serious disagreement or concern had been expressed.

Senator BENNETT. I can understand that. I'm sure that you were, in fact, doing the best you could to restore some kind of normalcy. I can accept the idea that you would not automatically go and second guess Mr. Nussbaum. But now here comes a focus of complaints from someone who is not identified with Arkansas that, in fact, Mr. Nussbaum and the people on the White House Counsel's Office were not behaving as they should have done.

Mr. Gergen, you've made notes, a copy of which you've supplied the Committee, from your conversation with Mr. Heymann. If I can quote them, "There's a sense coming up from most people—too much control"—yeah, put it on the screen. I'm reading the final sentence. "Sense coming up from most people—too much control from beginning to end was exercised by people in White House involved directly with Vince." And that's the picture that I get, that the control, ultimately, of this whole thing prior to your phone call is in the hands of Mr. Nussbaum, and the White House Chief of Staff is unaware of any problem until you raise it with him.

Mr. GERGEN. Senator, I have had a hard time knowing exactly when this note was written. I believe this was a separate conversation. I'm trying to reconstruct this. Mr. Heymann and I had more than one phone call. We had been colleagues in the past; we have been friends; I have a great deal of respect for him. I believe this phone call was something that I undertook with Mr. Gearan, who was a previous witness here to this Committee, after talking to Mr. McLarty about the way the release of the note would be handled.

Obviously, once the note was turned over, the White House disclosed to the press that there was a note. Of course, there was an intense pressure from the press to know what was in the note, how to characterize it, what were its contents. The question arose on the White House side of how we should respond to this pressure. After talking to Mr. McLarty—and we talked about the best way to do it and agreed that the best way to do it and to find a process for the note was to talk to Mr. Heymann and to have a process

with which he would agree so that the White House wouldn't unilaterally release the note. Or could we find out how the Park Police intended to proceed. I believe that these are notes from a conversation that Mr. Gearan and I then had with Mr. Heymann on that subject. It was a separate conversation, I believe, Senator from the one that I described before and Mr. Heymann described in his testimony regarding the 29th.

Senator BENNETT. I see. Well, my time is up. I thank you for that clarification. Just to summarize, Mr. Chairman, I find it interesting that during this period the people directly involved were either all under the direct control of Mr. Nussbaum or connected through Maggie Williams to the First Lady. The Chief of Staff of the White House is unaware that there are any problems from either of those sources until Mr. Gergen calls him. Thank you.

Senator SARBANES. Mr. Chairman, I yield to Senator Kerry.

OPENING COMMENTS OF SENATOR JOHN F. KERRY

Senator KERRY. Thank you very much, Senator Sarbanes. Good afternoon, gentlemen. Mr. Burton, I would like to go back to the earlier testimony you had with respect to the briefcase, if I can, for a moment. I take it from the dot that we saw on the screen earlier you were standing slightly behind and to the right of the briefcase; is that correct?

Mr. BURTON. Yes, sir.

Senator KERRY. The briefcase was between you and Mr. Nussbaum to your left seated at a chair?

Mr. BURTON. Yes, sir.

Senator KERRY. Now, earlier testimony here indicated that the briefcase was a kind of briefcase you have to actually kind of physically bend apart to open, to reach in and pull things out. Is that your memory or not?

Mr. BURTON. Yes, sir.

Senator KERRY. Do you recall Mr. Nussbaum—well, tell me, how did Mr. Nussbaum take the documents out?

Mr. BURTON. My recollection is that Mr. Nussbaum bent down to the briefcase and would open the briefcase and take out a handful of documents and set them on the desk. Mr. Foster had a very full briefcase. It took more than one trip to do that. I don't recollect whether he did one set and went through it and then went back and did another set and went through it, but I do remember that after he took the last set out, that the briefcase—that was the last file in the briefcase.

Senator KERRY. Did the briefcase then close by itself after all the files were out?

Mr. BURTON. As I sit here today, I can't say I remember that it closed by itself or exactly what he did with it. My recollection is as he was holding the briefcase open, he took the files out. I'm watching him do that; it's occurring right in front of me. I can see that that's the last file, and then he actually set the briefcase aside, so to free up that space in front of the drawer.

Senator KERRY. So he moved the briefcase, you are saying, immediately after he took the files out of it?

Mr. BURTON. That's my recollection.

Senator KERRY. Your view of whatever it is you saw, the litter, as you described it, or the Post-its and paper clips was literally as the last—as the documents are being taken out you saw the bottom of the briefcase?

Mr. BURTON. If I saw the bottom of the briefcase for as long as 3 seconds, it would surprise me.

Senator KERRY. And your focus, I take it, as most people's focus in the room, was—at that moment were on the files themselves that were coming and being placed on the desk.

Mr. BURTON. Yes, sir.

Senator KERRY. But your view, in effect, was probably better than Mr. Nussbaum's because you were standing up above it, and he was seated below and to the left; is that correct?

Mr. BURTON. I was standing and he was seated, yes, sir.

Senator KERRY. At any rate, obviously, by virtue of that definition, they were different views, from opposing angles and sides?

Mr. BURTON. Yes, sir.

Senator KERRY. Did you subsequently look at the briefcase at any other time?

Mr. BURTON. I think the briefcase was shown to me in front of the grand jury.

Senator KERRY. But not until then?

Mr. BURTON. No, sir.

Senator KERRY. In the course of the events of the next days, you never saw the briefcase again?

Mr. BURTON. That's correct.

Senator KERRY. OK. Let me turn to an issue that I think perplexes a lot of people and is at the center of lingering questions and efforts to try to characterize what may or may not have happened, and that is the question of privileges.

Mr. Burton, you said in your deposition at one point that you had to have a meeting because, "We have to discuss how to protect the various privileges." Is that accurate?

Mr. BURTON. I don't have a copy of my deposition with me, but I'm sure that's accurate.

Senator KERRY. Well, just for the record, let me just say on page 80, that is the terminology used: "Protect the various privileges." What privileges beyond attorney-client privilege struck you as appropriate to be thinking about?

Mr. BURTON. That's a tough question. The reason why is that 2 years have elapsed since then, and you know, privileges come up when you are a practicing lawyer a lot. So I don't remember to this day if I could articulate which of the various executive privileges, whether the deliberative process privilege, whether what's been called the Presidential privilege, attorney—what—attorney-client, if there was possibly any work product doctrine; that's sometimes labeled a privilege. I cannot tell you which one. That wasn't my decision. That wasn't part of what I did.

Senator KERRY. But you took part in the discussions with respect to it; you, Mr. Nussbaum, Mr. Quinn, and Mr. McLarty at one point sat in a room to discuss this. Correct?

Mr. BURTON. I do not remember if Mr. McLarty was in that meeting. I do remember Mr. Quinn, Mr. Nussbaum, and others from the Counsel's Office, and I was at that meeting.

Senator KERRY. Well, Mr. Quinn, you had a stronger view, in effect, than Mr. Nussbaum, and I wonder if you would share with the Committee your perception of what was at stake.

Mr. QUINN. Yes, I would like to do that, Senator. At this time there was simply no doubt in my mind but that there was at least a likelihood that privileged materials and classified documents might have been in Mr. Foster's office. If I may, I would like to go through the several categories of documents in question to help explain why I was concerned about them, starting with what I think we would all agree is the most compelling case, namely documents that are classified because their disclosure might compromise our national security.

I believed then and I continue to believe that with respect to these documents, Mr. Nussbaum's obligation to protect them was absolute. I would like to read to you for a moment from the oath that one signs when one is granted a security clearance, as Mr. Nussbaum presumably was. The copy I have is the oath I signed when I was granted my security clearance.

It informs me that the unauthorized disclosure or negligent handling of classified information by me could cause damage or irreparable injury to the United States. I'm asked in signing this to agree that I will never divulge classified information to anyone unless I have officially verified that the recipient has been properly authorized by the U.S. Government to receive it or I have been given prior written notice of authorization from the U.S. Government department or agency responsible for the classification of the information that such disclosure is permitted.

I understand that if I am uncertain about the classification status of information, I am required to confirm from an authorized official that the information is unclassified before I may disclose it. I further understand that I am obligated to comply with laws and regulations that prohibit the unauthorized disclosure of classified information, and this document goes on to inform the signatories, among other things, that any breach of this agreement may constitute a violation of the criminal laws of the United States.

Now, the obligations set forth in this oath, in my view, cannot be negotiated away with the Park Police or the Department of Justice or anyone else. These obligations aren't subject to compromise, I don't believe, for the sake of appearances or simply to expedite an investigation or to amount to good politics or good public relations. As I say, I think these obligations are absolute, they are clear, and they impose an affirmative obligation that one undertake steps to prevent the improper disclosure of classified information to unauthorized persons.

At the same time, Senator, I think that Mr. Nussbaum had an obligation to protect client confidences. His clients in this regard, mind you, are not just the President but all of the many people within the Executive Office of the President who might from time to time have sought his counsel. This obligation, too, is a very serious one imposed, as you know, on lawyers by the ethical rules that are to govern their behavior.

You raised the question of the executive privilege. And I know that there's been much debate about whether or not it applies in circumstances involving a search by a member of the Executive

Branch of the files of another member of the Executive Branch, and that's an entirely fair question to raise. There might well be a strong argument that in certain circumstances like that, there is no executive privilege; but please understand that at the time this concern was raised no one knew what further disclosure of the documents might be contemplated or might later occur whether contemplated at that time or not. So as far as I'm concerned, the concern that the search be conducted under a set of ground rules that would preserve any applicable executive privilege was entirely valid.

There's a last category of information I would like to discuss, too, and that's the category of what I'll call sensitive information, which is neither privileged nor classified, but which I think it was important that Mr. Nussbaum and his staff be mindful of. Let me give you an example. It's entirely possible that at the time of this search Mr. Foster may have had, sitting on his desk or in his credenza, files relating to the background checks on individuals who held office in the Executive Branch or were considered for positions in the Executive Branch. He may have had the files of persons known to the investigators. He may have had the files of the superiors of the persons doing the investigating.

Now, it was simply not unreasonable, in my view, to have undertaken to learn whether such documents were present, and, if so, to have taken steps to protect them from disclosure, particularly if on their face they seemed to bear no relevance to the search.

And I must, just in closing, Senator, say that I understand Mr. Heymann has taken a different view and that Mr. Collier may have complained, but I've been a member of the bar for 20 years and practiced law in this town for almost 17, and in that time I can tell you I have simply never heard of a lawyer opening up an office or a set of files to investigators without undertaking any effort to determine whether there might be among those files sensitive or privileged materials—and in this case classified information—before any such file search is undertaken. As I say, at the time I expressed the view quite strongly, and I hold to it today that it would have been absolutely improper and negligent for Mr. Nussbaum to have done so without first conducting the kind of review he did.

Senator KERRY. I see my—the time was taken up. It's an important area, and I actually want to explore it further. I don't have the time now, but I would like, Mr. Chairman, just to ask one quick follow-up to that if I can.

Is it not accurate that the investigators have thus far said—and I don't question this, incidentally. I think it's accurate that they quote, wanted to not read the files but simply to determine if there was something that might be an extortion note or to see if there was evidence of state of mind. My question is could you do that conceivably and make that determination legitimately without, in effect, reading the substance or seeing the substance sufficiently to be able to make that judgment?

Mr. QUINN. I don't know, and I hesitate to speculate, Senator, but I do believe that taking the precautions I recommended would not in any way, shape or form have prevented the investigators and the White House Counsel from finding the kind of evidence you describe.

Senator KERRY. Well, we'll try to come back. I take it as of the 22nd, at that point in time you had no knowledge that the Department of Justice attorneys were involved; is that correct?

Mr. QUINN. That's correct. It was my impression at the time that we were talking about a search to be conducted by the Park Police, but even had I known that there were officials from the Department of Justice who might have conducted the search, I would still have been concerned to, number one, make sure that they had the appropriate level of security clearance, which I don't think one should assume, and second, to express concern about—at a minimum—the attorney-client privilege.

Senator KERRY. Thank you, Mr. Chairman. Do I have time still?

Mr. BURTON. Mr. Chairman, can I clarify the record on one answer?

The CHAIRMAN. Certainly.

Mr. BURTON. Senator Kerry, I had not turned to that page in the deposition you had referred to when you asked me the question about privilege. I thought you were asking about the privilege concerning if there was any privilege with respect to the writing that had been found a week later. And so my answer would probably be different, but—

Senator KERRY. Fair enough. That's a second area of inquiry. But I accept that as a distinction.

The CHAIRMAN. Mr. Quinn, let me tell you I've heard your erudite explanation about concerns with regard to documents that may be classified, have sensitive national security information, and, of course, may be privileged. Does it disturb you that a person who has no security clearance goes into the office, looks through files, looks through the drawers, looks through a briefcase? Would that disturb you?

Mr. QUINN. I am not sure what person you are referring to, Senator.

The CHAIRMAN. A person who does not have national security clearance—or any clearance, for that matter—does not have top secret clearance. Would that disturb you?

Mr. QUINN. Well, I expressed the view at the time—

The CHAIRMAN. I'm asking you if it would disturb you if a person were given access to Vince Foster's office after his death and came in and searched his office, looked into various files, looked through the drawers. Would that disturb you?

Mr. QUINN. I think I so testified, Mr. Chairman, that it did disturb me.

The CHAIRMAN. No, I'm asking you, would it or wouldn't it?

Mr. QUINN. It did.

The CHAIRMAN. It did. In other words, you are saying that Patsy Thomasson coming in and looking at the office and opening drawers would disturb you.

Mr. QUINN. It might. I have no idea whether she had a clearance at that time or not.

The CHAIRMAN. If she had no clearance, would that disturb you?

Mr. QUINN. It would have disturbed me for the same reason that it disturbed me that—

The CHAIRMAN. Let me ask you, do you know whether Mr. Adams or Mr. Margolis of the Justice Department, career offi-

cials—had you ever heard of Mr. Margolis or Mr. Adams prior? You have been practicing in this town a long time, and they're career officials—I think Mr. Margolis certainly for well over 20 years. Were you aware of David Margolis?

Mr. QUINN. No, I don't know him, Senator.

The CHAIRMAN. You never heard of him by reputation?

Mr. QUINN. Only by reputation.

The CHAIRMAN. And Mr. Adams?

Mr. QUINN. No, sir.

The CHAIRMAN. OK. If I told you that they had top secret clearance, would it disturb you if they were given the opportunity to review the files with Mr. Nussbaum?

Mr. QUINN. Senator, it would still be important to learn what classified materials—as you well know, top secret is not the highest level of classification in this Government. I had no way of knowing whether there were code word-classified materials that are of a higher level of sensitivity than top secret. It would still have remained important that one undertake to learn whether that was the case, and if so, to deal with it properly.

The CHAIRMAN. I understand your point. But it seems rather inconsistent, at least from my perspective, that, on the one hand, someone with no clearance was given unfettered access with no one reviewing or ascertaining the appropriateness of the search, and then, on the other hand, the question of privilege comes up with regard to Justice Department officials reviewing the first page or page and a half of documents to determine into what category they fell. But——

Mr. QUINN. Senator——

The CHAIRMAN. You've expressed your opinion, and I understand.

Mr. QUINN. But can I respond to that?

The CHAIRMAN. No, I'm just telling you my concern.

Mr. QUINN. Well, I think you have left an erroneous impression.

The CHAIRMAN. No—now, I'm just——

Senator SARBANES. Well, now——

The CHAIRMAN. Yes, you can. I'm just telling you that I have a difficult time understanding why one has unfettered access. That would concern this Senator much more than a procedure where—a number of people, including Mr. Heymann, have testified they thought there was a process that was agreed to, but that process was not followed. And that's part of what we're looking at, but, again——

Mr. QUINN. May I respond?

The CHAIRMAN. It is not a question. It is an observation which I have made. You see I'm running a clock here.

Mr. QUINN. But, well, it lays out erroneous premises, and I just wanted to correct the record. But if you don't want me to do that, then I won't.

Senator SARBANES. You have to give him a chance to respond.

The CHAIRMAN. Let me say then, in fairness—and I'm going to because I want to turn it over to Senator Grams; I'm impinging on his time. But go ahead——

Mr. QUINN. OK. I'll be quick.

The CHAIRMAN. I don't think you are going to tell us anything you haven't told us already.

Mr. QUINN. Well, I'll be quick.

The CHAIRMAN. That's my point.

Mr. QUINN. First of all, your observation suggests that there is something inherently in conflict in my position, and you imply that I knew that or approved that Patsy Thomasson was looking in the office when that was not at all the case.

The CHAIRMAN. You mean you weren't aware of that?

Mr. QUINN. I was not.

The CHAIRMAN. Did you ever become aware of that?

Mr. QUINN. Not until I may have read it in the newspapers, but I wasn't aware of that at the time, so there's nothing——

The CHAIRMAN. Did that disturb you?

Mr. QUINN. I don't recall my reaction at the time, but there was nothing contradictory about my position.

The CHAIRMAN. You see, Mr. Quinn, it seems to me that it is a very—here we're talking about Justice Department people who have worked out what they thought was a very reasonable——

Mr. QUINN. I was not aware of that, either.

The CHAIRMAN. You weren't aware of that?

Mr. QUINN. No.

The CHAIRMAN. Well, would that change your opinion——

Mr. QUINN. And I'm not aware of it today.

The CHAIRMAN. Oh, you're not aware of it?

Mr. QUINN. I'm aware that Mr. Heymann says that that's the case, but I'm also aware that others have testified——

The CHAIRMAN. Mr. Margolis says it was the case.

Mr. QUINN. But I gather from news reports that others in the Counsel's Office suggest it's not the case.

The CHAIRMAN. OK. I'm not going to press this. I see where your line is. You don't think that Mr. Heymann had an agreement. But, to your knowledge, do you know whether he did or didn't?

Mr. QUINN. I do not. I don't know one way or the other.

The CHAIRMAN. OK.

Senator Grams.

OPENING COMMENTS OF SENATOR ROD GRAMS

Senator GRAMS. Thank you very much, Mr. Chairman.

Mr. Burton, I would like to ask you a couple of questions, and I want to refer back to an exhibit that's been labeled Z1149. This, evidently, is a note where you are talking to a reporter. We will have this put up on the screen. Talking to a reporter. Mr. Burton, what is the date on this note, do you recall? When did it happen?

Mr. BURTON. It's undated. I generally recall it occurred at least several days after the note was turned over to the Park Police.

Senator GRAMS. So it was after the 27th?

Mr. BURTON. Yes, sir.

Senator GRAMS. You seem to be correcting the reporter here that it was 27 hours—you were trying to be specific—27 hours, not 30, from the discovery of the note at 4:00 p.m. to the notification of law enforcement officials at 7:00 p.m., which I would assume was the following day. You are trying to be specific here in telling her from the discovery of the note at 4:00 p.m. to the next day it was 27 hours, not 30; is that correct?

Mr. BURTON. Senator, if I could just give one explanation here. We went through this in some detail during my deposition, "this" being what is my notetaking practice. What I testified to then was sometimes I take notes that are my own musings. Sometimes it's what the person I'm talking to is saying, and sometimes it's some combination. So I can't tell by looking at that, but I think what you just described is a fair reading of what point one is. But I wanted to——

Senator GRAMS. What I wanted to point out is the word discovery, "d-i-s-c 4:00 p.m. Monday" means discovery; is that correct? The abbreviation d-i-s-c?

Mr. BURTON. I will tell you if you look—in that place it does, but I'll tell you again: I was a journalist for 15 years before I became licensed to practice law. I use a variation of abbreviations. I use some standard Associated Press abbreviations; I use some of my own shorthand. Sometimes d-i-s-c means discussed. Sometimes it means discovered. Sometimes it means disclosed. So in this case it means discovered, yes, sir.

Senator GRAMS. How do you follow your notes, then, if you're not consistent? Usually I find notetaking is consistent. But let me refer you back, then, to Z514 where it says—in this note that you took you have two points.

Mr. BURTON. Can I get my note in front of me?

Senator GRAMS. Sure. It's on the screen as well, Mr. Burton. Where it says two points. "Far happier if" discovery, "if someone other than Bernie." Now, I would assume there again that the abbreviation of d-i-s-c would mean far happier if discovery if someone other than Bernie. Would you agree that that's discovery?

Mr. BURTON. No, sir, and it is because of the timing on these notes. Again, these are undated. But based on the list of names up here——

Senator GRAMS. I am not sure when the date on this note would be.

Mr. BURTON. Yes, sir, it's undated. But based on the list of names, it would have had to have been after the note was found and after Mr. Nussbaum came and told me. At that point it was no longer an issue as to who had discovered the note. It was an issue as to who was going to discuss the note and the contents of the note with the press when it, and if it, was turned over or leaked out—the contents of the note.

Senator GRAMS. But on that same page, the next line, if I can read that——

Mr. BURTON. I can read it.

Senator GRAMS. "If worried about Usher's Office, discuss with me."

Mr. BURTON. Yes, sir.

Senator GRAMS. Now, there you used in the next line and you spelled out discuss.

Mr. BURTON. I would refer you back to my explanation a minute ago. If I had all my notes here, I could show you where I abbreviate transportation 7 different ways, discussed four or five different ways. I understand what your point——

Senator GRAMS. Let me go back to another note, then. This is on Z515. "We have discovered a personal writing of Mr. Foster." Can you read that for me?

Mr. BURTON. Yes. "We have discovered a personal writing of Mr. Foster reflecting his depressed state." In deference to the family, no further comment.

Senator GRAMS. There again, now, there it referred to discover. I'm just seeing there is more consistency in your writings if discover is d-i-s-c and discuss as you wrote out in the other is discuss——

Mr. BURTON. I understand that. My point is only that discovery makes no sense in that context.

Senator GRAMS. Well, if it is discovered, what does that note mean then?

Mr. BURTON. It makes no sense if it's discovered. If the word is discovered there, the note makes no sense.

Senator GRAMS. What if it is discovered, does it make sense then? Or if it means discussed, I mean.

Mr. BURTON. If the word is discovered, it makes no sense.

Senator GRAMS. What if it's discuss?

Mr. BURTON. If it is discuss——

Senator GRAMS. It doesn't make sense then.

Mr. BURTON. Not—that does make sense to me. It means that whoever said this, whatever meeting that came out of, if the contents of the note were going to be discussed with the press, they did not want Mr. Nussbaum doing that discussing.

Senator GRAMS. Now, as a reporter, would you come back and report on this? I mean, how would you read your own notes to get a good story out of this if you are a reporter? If in one case it means one thing and another in another case? I'm just looking for consistency.

Mr. BURTON. I understand. I wasn't writing notes like you would write as a reporter when I was writing these notes.

Senator GRAMS. Well, I was in reporting, too, for a number of years, but you got to be consistent when you are going back over your notes when you are trying to ascertain what you are talking about or thinking at the time you were taking the notes.

Mr. BURTON. If that's the purpose for which you are writing the notes, yes, sir.

Senator GRAMS. Mr. Chairman, I have some other questions, but I'll wait and do it at another time.

The CHAIRMAN. We will come back to you.

Senator Sarbanes.

Senator SARBANES. I'm going to yield to Senator Bryan. Could the d-i-s-c mean disclosure in that note that you were talking about?

Mr. BURTON. Yes, sir. I think it could mean discussed or disclosure.

Senator SARBANES. Senator Grams has aptly pointed out where you used "discussed" elsewhere, you wrote it out. Even if you put that to one side, the reference there could have been to disclosure, I take it; could it not?

Mr. BURTON. Yes, sir.

Senator SARBANES. Which would have been a relevant topic at the time, as I understand it, given the nature of the people you indicated were involved. I mean, that was the issue at the time, who was going to disclose this to the press; is that correct?

Mr. BURTON. Yes, sir.

Senator SARBANES. Senator Bryan.

OPENING COMMENTS OF SENATOR RICHARD H. BRYAN

Senator BRYAN. Thank you, Senator Sarbanes.

Mr. Gergen, I want to ask you a couple of questions with respect to the handling of the note once it was discovered. My understanding is that you were in Chicago with the President when Mr. McLarty alerted you to the fact that a note had been found; am I correct?

Mr. GERGEN. That's correct, Senator.

Senator BRYAN. When you returned to Washington—was it later that evening?

Mr. GERGEN. Yes, sir. I came back early on a commercial flight.

Senator BRYAN. On the following day there was a meeting in the White House in which a discussion occurred as to how the note should be handled.

Mr. GERGEN. That's correct, sir.

Senator BRYAN. To the best of your recollection did it include, in addition to Mr. McLarty, Mr. Nussbaum and Mr. Burton?

Mr. GERGEN. Yes, sir.

Senator BRYAN. At that meeting was there unanimous agreement among all parties that the note should, in fact, be turned over to law enforcement?

Mr. GERGEN. Senator, I was a little hazy on that point 2 years after the fact. During my deposition I was given a copy of the 302 report done by the FBI after they had interviewed me on the 30th, which was, of course, in the same week, just 3 days later. During that interview with the FBI, I reported to them that there was a unanimous agreement at that morning meeting. That was the first meeting, to my knowledge, that we had as a group.

After we had been in Chicago, the two—Mr. McLarty and I had been in Chicago with the President. We came back, and the next morning in our first meeting—as I told the FBI and as I believe to be correct—there was a unanimous agreement that the issues that had been raised the night before had been resolved in the minds of those who had raised them, and it was a unanimous agreement to go forward. Mr. McLarty, I must say, had agreed on that point the night before.

Senator BRYAN. That the note should be turned over to law enforcement as soon as possible.

Mr. GERGEN. Yes, sir.

Senator BRYAN. Mr. Burton, is that your recollection as well?

Mr. BURTON. Yes, sir.

Senator BRYAN. Mr. McLarty, your recollection?

Mr. McLARTY. Yes. I think, Senator, my feeling was that the note would need to be provided to the authorities, and it eventually would become public knowledge; either we would disclose it or it would become public knowledge. There were issues outstanding that I felt were serious issues that needed to be fully evaluated,

which we did promptly the next morning when we were back in Washington.

Senator BRYAN. Among those issues there was a discussion of the issue of executive privilege.

Mr. McLARTY. Senator, is that question to me?

Senator BRYAN. Yes, sir.

Mr. McLARTY. Yes, I recall legal issues being raised regarding privilege. I don't recall the specifics of whether it was executive privilege or others, but I remember there were legal issues raised that Mr. Nussbaum and perhaps others wanted to reflect on, and I thought that was understandable and reasonable.

Senator BRYAN. And further, there was a discussion as to the fact that Mrs. Foster needed to be notified as a matter of some decency and human compassion, and that the President should be notified?

Mr. McLARTY. Yes, very much so, particularly Mrs. Foster and the entire Foster family, the children and Vince's mother, and we wanted to do that in a sensitive way. So there were those three issues, as you pointed out, and I also wanted to see the note. I was perplexed by it. I just didn't understand it.

Senator BRYAN. Mr. Gergen, would that be your recollection as well?

Mr. GERGEN. Yes, sir.

Senator BRYAN. Mr. Burton, yours?

Mr. BURTON. That is my recollection.

Senator BRYAN. And indeed, after the President was notified and after Mrs. Foster was notified, the note was, in fact, turned over to the law enforcement authorities?

Mr. BURTON. Yes, sir.

Mr. GERGEN. Senator, the first conversation I had with the President and Mr. McLarty was around 6:00 p.m. on the night of the 27th, and in the early part of that conversation, the President ordered that the note be turned over.

Mr. McLARTY. Senator, what I recall is that we had already begun to implement the plan of action the first thing that morning, in the meeting you are referring to, which I believe we had right after the morning staff meeting. Our first step was to notify Mrs. Foster. We found she was traveling to Washington unexpectedly—or, at least, I was not aware of it—and that did delay this entire process. But our thought was to notify the family and the President and then proceed forward.

Senator BRYAN. Mr. Gergen, I realize it has been 2 years; the questions have been asked many different ways. Your deposition has been taken. But in your deposition you were asked, in effect, whether or not the note was turned over in a reasonable period of time, and your answer to Mr. Kravitz, who apparently was asking the question, was yes, that you felt that all circumstances being considered—I'm paraphrasing—that the note was turned over in a reasonable time to law enforcement. Would that still be your testimony?

Mr. GERGEN. Senator, it was determined that there were two preconditions; at least it was agreed upon within the staff. One was to talk to the widow and to ensure that she felt comfortable with turning it over. Her lawyer, Mr. Hamilton, was certainly very sup-

portive and was going to recommend to her that the note be turned over. As I recall, she was on her way back that day from Arkansas and was not available until sometime in the afternoon. I was not aware that she came to the White House, but I know that Mr. Hamilton did confer with her later in the afternoon.

The other precondition was to talk to the President and to make sure that he was comfortable with it. As I said, in my first meeting with him, he wanted it turned over.

Obviously, if those two preconditions had been met earlier, it would have been better, but under the circumstances, that was the earliest we could get it all done.

Senator BRYAN. I think that is what you said in your testimony. Reading from page 135, 136, your response was, "I thought as a precondition to turning over the note that we needed to tell the President, and upon reflection I thought we needed to tell Mrs. Foster," which you've indicated today. "I thought once we had told Mrs. Foster and told the President, that we turned it over as expeditiously in as reasonable a [time] period as possible."

Mr. GERGEN. Yes, sir. I might add that Mr. McLarty agreed during that day that he thought it ought to be done that day. It *had* to be done that day. I believe that the appointment with the Attorney General was set up prior to talking to the President. So that there was an understanding she would come to the White House around, I believe, 7:00 or 7:30 p.m. that evening. She did not know, I think, at that time the subject of the meeting. But I do recall having a brief conversation with her sometime, I think in the Roosevelt Room that afternoon, in which we said we would see each other that evening without talking about the substance of it. So that Mr. McLarty, in effect, had the process on track during the afternoon.

Senator BRYAN. Waiting for these two preconditions to occur, as you've indicated.

Mr. GERGEN. Yes, sir.

Senator BRYAN. Mr. Quinn, let me focus the attention back with you for a moment on this question of privileges. You've given us a tour de force here, if you will. We've talked about the need to protect the classified information because of national security concerns, the attorney-client relationship, and you've indicated that might involve several people who might have, from time to time, asked Mr. Foster attorney-client types of questions. The issue of executive privilege and the area of sensitive information. You cited as an example information that might be contained in the background check. Any other areas?

Mr. QUINN. No, sir. I think those are the principle areas that would be of concern.

Senator BRYAN. Now, those were your views on the 21st when this discussion occurred. Are those still your views?

Mr. QUINN. I believe it was the morning of the 22nd, Senator.

Senator BRYAN. I stand corrected. On the 22nd. Two years have passed. Are those still your views?

Mr. QUINN. Very much so, Senator.

Senator BRYAN. And you anticipated, did you not, that maybe the Department of Justice or Mr. Heymann might have a different

point of view? Or is that fair to say, that these are questions that are not altogether clear-cut; reasonable people can disagree?

Mr. QUINN. To be honest with you, I didn't anticipate anything about Mr. Heymann because—on the morning that I was brought in, the context, as far as I was concerned, was an imminent search by the Park Police. I was unaware or at least I don't recall being aware at this time that individuals from the Department of Justice might be involved in the search—I point that out just by way of clarification. It does not change my view.

In response, it is not at all surprising to me. I would fully expect Mr. Heymann to have had a different view at that time. But that doesn't make it correct. And it doesn't mean that that's the way the search should have been conducted. In the ordinary course, as you well know, when one receives a subpoena or similar document request, one's counsel would search the files and determine what is relevant and what is not relevant.

I wasn't even going that far in suggesting the issues of relevance be decided by individuals in the White House Counsel's Office. Rather I was taking the more limited but, I think, important view that a preliminary review be undertaken to make sure that materials in the categories we discussed were protected if, indeed, they were present and required protection.

Senator BRYAN. Well, I note my time is up, but I would just end with an observation. Mr. Heymann was not surprised that the White House would take a different view of the scope of the privilege and the process. In fact, he commented during the course of his testimony that his experience has been, since the Eisenhower Administration, that there's always been a reticence—that's my word, not his—to open up that information. He talked and somewhat lamented the lack of an institutional or corporate memory; that is to say that each Administration has confronted various occasions various times in which there's been a reluctance because of this different view of the privilege and the nature of the prerogatives of the Chief Executive of the United States and his staff.

Mr. QUINN. It is important to note that it is my understanding that Mr. Heymann acknowledged that, in fact, no one had any right at that time to search Mr. Foster's office. No one was operating under any compulsory process that would have given them any right whatsoever to search that office.

Senator BRYAN. My time is up. I thank the Chairman.

The CHAIRMAN. Senator Grams and then Senator Bennett. I think—Senator Grams, were you going to—

Senator GRAMS. Thank you very much, Mr. Chairman.

I would like to, Mr. McLarty, follow up on the events surrounding the so-called discovery of the note on the 26th and the 30-hour delay in handing it over to law enforcement officials.

According to previous testimony, Mr. Neuwirth found the scraps of paper sometime around 4:00 p.m. in the afternoon; I think that's correct. Yet the first notification made to law enforcement officials was not until 7:00 p.m. the next night, 27 hours after the discovery of the note. Testimony has been two preconditions; I think Mr. Gergen mentioned this. First, the need to notify the President. Second, the concern that Lisa Foster would find out about the note

through the news media, and also a concern brought up about executive privilege or other concerns.

I would like to start with the issue of notifying the President of these three concerns. Given the importance that has been placed on the subject of the note, it seems strange that the President was not told about the discovery of the note until an entire day later. This is something that consumed many different people. Directives were given to others to find a note, look for a note.

So it's especially confusing considering that Mr. Foster was a close friend of the President, that the apparent suicide of the White House Deputy Counsel was big news at the time, that three White House officials were scrambling through the West Wing on the night of Mr. Foster's death, just trying to find a note. Yet, Mr. McLarty, you flew back with the President from Chicago, and you didn't tell him about the note. Why?

Mr. MCLARTY. Senator, that's correct. When the note or scraps of paper were reported to me by telephone, I was perplexed when I heard of it. We had just had the funeral for Vince and were moving forward, and I was perplexed by it. I was in a hotel room in Chicago. I didn't understand it. It did not refer to suicide. Did not have a salutation or a signature.

At that point there were the issues—there were legal issues that were raised with me that I took seriously, that were raised in a serious way, that Mr. Nussbaum and others wanted to reflect on. There was the issue of notifying the family. And because I was perplexed by the note, I did want to see it, and I simply felt that it was not the correct course at that time to tell the President of a situation that was really not complete, that had not been fully reviewed, and we had no plan of action.

Once we returned that night—we had a meeting the first thing the next morning, as has been testified. We made a decision; we moved forward. The President had a very full schedule that day, and I think, in my mind at least, we did want to notify Mrs. Foster. The fact, Senator that unexpectedly we were not able to notify her—I think I actually called Mrs. Foster's home shortly after this meeting, shortly after the staff meeting, and to my surprise she was traveling to Washington. So I think in my mind that slowed me down, at least in terms of notifying the President because we were not going to provide the note until Mrs. Foster could be told.

Senator GRAMS. Now, I understand you wouldn't tell the President if this were details of other issues, maybe dealing with something else. But on such a personal level, do you make an exception here, or don't you make an exception that you have concerns? This is something very close to the President, almost family-type matters, but yet until you had a detailed understanding of this, you were going to withhold this information from him? It seems like there would have been an exception under the rule.

Mr. MCLARTY. Well, Senator, I think a better understanding, I was perplexed by it, and I made the decision not to tell the President. This did not seem to me a matter that should be brought to his attention that night until we could fully review the matter.

Senator GRAMS. How come? Personal distress or—

Mr. MCLARTY. No, it was a decision on my part. I had to use discretion as anyone in my position would of what you bring to the

President and when you bring it, and usually I think you want to bring something in an orderly way and have a plan or a recommendation or a full discussion of it and not bring bits and pieces of an information or situation——

Senator GRAMS. You don't think he would have wanted to know about at least this much of it so far?

Mr. McLARTY. He didn't, Senator, when we discussed it with him that afternoon.

Senator GRAMS. The First Lady was aware of the note, you already knew of that?

Mr. McLARTY. Yes, Mr. Nussbaum had told me that he had told the First Lady about the note.

Senator GRAMS. Your interest in the note, did you make any attempt to look at the note that night when you returned?

Mr. McLARTY. No, I did not.

Senator GRAMS. What time did you return back from——

Mr. McLARTY. It was probably around 11:00 p.m. when we landed and close to midnight when we returned home.

Senator GRAMS. What do you talk about on the flight back? Do you recap the event that you had just been at or do you start already laying preparation out for the next event? This seems like it's a time for relaxing a little bit, and that's why I still find it hard that something this close to the President, personal-type information, would not be adequately addressed at this time.

Mr. McLARTY. Senator, return trips vary a great deal depending on the nature of the circumstances. In some cases the President wants some time for himself, or I may have certain phone calls or other matters. I honestly don't recall what we did that particular night. I did make the judgment not to tell the President that night and until we had further information that could be presented to him in an orderly way with all the details.

Senator GRAMS. Did anybody recommend to you, like Mr. Gergen, I think, if I read this correctly, recommended that you tell him about the note?

Mr. McLARTY. I think Mr. Gergen felt the note should be provided to the authorities, and the President should be told, and the family should be told in a sensitive way. That's as I recall it.

Senator GRAMS. When you did tell the President of the note on the 27th—and this is about 5:00 p.m. in the afternoon on the 27th?

Mr. McLARTY. It was late afternoon, yes.

Senator GRAMS. What was his reaction?

Mr. McLARTY. He had a full schedule that day, and that was one reason we had not told him earlier. Again, Senator I think had Mrs. Foster been notified that morning as I had anticipated she would be, I think we would have notified the President earlier and moved the process forward. And I wish that would have been done.

Senator GRAMS. How did he take the news? Was he emotional?

Mr. McLARTY. Yes, I understand; I just wanted to give that context. No, he was not. I came in first, and Mr. Nussbaum came in shortly behind me, and Mr. Gergen entered the Oval Office. He was informed of the note, as I remember it. I can't recall whether Mr. Nussbaum read him the note or outlined what was in the contents.

Senator GRAMS. So Mr. Nussbaum was with you in the Oval Office at the time?

Mr. MCLARTY. He was. That's my memory, yes.

Senator GRAMS. Did the President seem surprised, or did he ask when did you find it; why wasn't I notified earlier?

Mr. MCLARTY. I don't recall his asking those questions. He took in the information, as I remember it, Senator Grams—

Senator GRAMS. He just accepted the fact.

Mr. MCLARTY. —and at that time we said we were going to provide it to the authorities. I think we told him Mrs. Foster either had been notified or was going to be notified and told him how we were going to proceed. It was a report to him, really. He accepted that report and he said do with it as you think is right, give it to the authorities; and that was about it.

Senator GRAMS. So you're not sure if he was told of the content of the note or was read the content or if he even asked what it was about.

Mr. MCLARTY. Senator, I believe Mr. Nussbaum—I explained, I think, the general situation. I believe Mr. Nussbaum related some of the details you're asking about. I don't recall it specifically, but I think certainly Mr. Nussbaum probably reviewed what was in the note. I don't recall whether he read it to him.

Senator GRAMS. You don't know whether he asked—or did he ask at that time whether the First Lady was aware of the note.

Mr. MCLARTY. I don't recall that he asked.

Senator GRAMS. He never asked that. He never said that Hillary told me that overnight because she already knew about it?

Mr. MCLARTY. No, he did not. I don't believe he said that. I don't remember his saying that.

Senator GRAMS. So you assumed that this was the first that he had heard about the note from anybody?

Mr. MCLARTY. Yes, I did.

Senator GRAMS. Did he ask why law enforcement officials hadn't been notified?

Mr. MCLARTY. I don't believe he did. Again, Senator, we gave him some background there. Told him what we were doing and how we were proceeding, which would have included providing the note to law enforcement officials.

Senator GRAMS. So it seemed to be kind of routine business and matter-of-fact. It seems kind of strange knowing that this was one of his best friends and all of the speculation surrounding looking for a suicide note that night, and then finally when something was found, he didn't—wasn't inquisitive; he didn't inquire about it; he didn't seem to want to know more information except for to say you handle it the best way you know how.

Mr. MCLARTY. I don't think he—"matter of fact," I'm not sure that's a fair characterization. Again, we gave him the background, told him the details, how the note had been found. I think it was read to him or at least explained to him, and we told him what we were going to do. Again, at least the note did not strike me as a suicide note for the reasons I've already mentioned, and I don't think it was presented to him in that manner, Senator.

Senator GRAMS. Mr. Gergen, very briefly, one of the other—you said two preconceived conditions or preconditions was notifying

Lisa Foster. What was your concern? Were you afraid the Attorney General or the Justice Department or the Park Police might leak this to the press before Mrs. Foster was notified?

Mr. GERGEN. Senator, as I recall, I did not focus on the night the note was found on the Lisa Foster question. We were really focused on telling the President then and giving it to the authorities. That's what I discussed with Mr. McLarty.

The next day, after we had the meeting in Mr. McLarty's office, I don't know quite how he arrived, but Jim Hamilton, who is Lisa Foster's attorney, came. At that time I became very focused on the fact that he, the attorney for Lisa Foster, felt very strongly that she should be told. Frankly, out of a sense of decency to her, I agreed with that proposition. It did seem to me appropriate because inevitably in this city a note of this kind will find its way into the press. I think it's incorrect to assume that we all regarded it as a routine proposition. We were very seized with this question about moving this note forward.

In my judgment there was a potential for a leak at any time, given the number of people who already knew about the note. I thought it was important, out of a sense of decency for her, that her attorney be able to speak with her and speak with her personally.

Senator GRAMS. I think it was a well-known fact that Mrs. Foster was in Arkansas. Was there any reason why a call wasn't placed to Arkansas to either other family members or friends to say would you go tell Mrs. Foster that a note had been found and we would like to make sure she knew about it. That could have been done before 6:00 p.m. in the evening. The President could have been told before 6:00 p.m. rather than waiting another 24 hours.

Mr. GERGEN. I did not necessarily think there was a sequence of telling her first and then telling the President; I thought both needed to be done.

Senator GRAMS. Either/or. Why wasn't she told that night by phone or why was it so important she had to be back in Washington, DC?

Mr. GERGEN. Senator, I don't know why she was traveling. What I recall from the conversation with Mr. Hamilton was that she was en route. In other words, she wasn't available by phone. The first time he would have access to her was sometime, he thought, around 3:00 p.m. that afternoon. That was what we were discussing around 11:00 a.m., whatever the time this meeting was. As I recall, it was rather late in the morning.

Senator GRAMS. It seems like in all the testimony we heard, there was no attempt to reach Lisa Foster until Mr. McLarty mentioned he tried to reach her the next morning. There was a lot of time that went by without any attempt even though this was one of the two preconditions: notify the President, notify Lisa Foster. No one made that attempt for another 18 hours.

Mr. GERGEN. You raise a good point, Senator. I can only tell you that the evening before, I was not focused on Lisa Foster. Apparently there were some discussions in the White House about her. The evening before, the conversations that Mr. McLarty and I had focused on arriving at a consensus to move forward with this, making sure the President was informed and consented, and moving

on. This additional consideration about Lisa Foster, for me at least, arose the next day when Mr. Hamilton arrived at the White House.

Senator GRAMS. Mr. Chairman, I have no other questions.

The CHAIRMAN. Thank you, Senator.

Senator Sarbanes.

Senator SARBANES. Senator Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Thank you, Senator Sarbanes. For the members of the panel here, I'm an addition to the Banking Committee from the Judiciary Committee, and I end up along with Senator Hatch, occasionally, at the tail end of these events here.

Mr. McLarty, in a city where I find a great many people question the motivation of others, I don't find anyone who questions your motivation of trying to serve the President well and the Nation well. And as we get so bogged down in all the minutiae of who said what when, I think it is worth repeating one sentence from your opening statement. "I never heard, nor do I have any reason to believe, that a decision to conceal matters relating to Whitewater, or anything else relating to the President's private affairs, motivated their decisionmaking."

We're spending a lot of time on the note, when it was disclosed and the time gap, and it is frequently referred to as a suicide note. That is not an accurate description. This is a note of someone who expresses his mood, his concerns. It was not a suicide note. If it were a suicide note, it might have been treated somewhat differently. And today, not just today but previous days, we've talked about the time gap. Mr. Burton, you were there on the 22nd when you went through the documents. The 23rd was the funeral. Is that correct?

Mr. BURTON. Yes, sir. 11:00 a.m. in the morning.

Senator SIMON. The 24th and the 25th, that was a weekend; is that correct?

Mr. BURTON. Yes, sir.

Senator SIMON. People scattered among other things, just to try and have some therapy. Bernie Nussbaum took off for Maine. I don't know what you did or others did, but then the 26th is when the note, the scraps of paper were discovered. Is that correct?

Mr. BURTON. That's correct.

Senator SIMON. So this is not an unreasonable time gap that we're talking about here. When you say you saw litter at the bottom of the briefcase, I happen to have the same kind of a briefcase. And so I took out the things—I always fill my briefcase full of stuff so I can read on planes—and I pulled it out, pulled out the stuff that was there, and I found paper clips. I found little scraps of newspaper—I tear things out of newspapers; David Gergen probably does the same thing. I found those little yellow stick-um things. It was just kind of a collection of junk there at the bottom of my briefcase. The fact that you saw it and others may have had a brief glimpse at it but you said nothing about it, does that indicate that you did not feel it was significant?

Mr. BURTON. Yes, sir.

Senator SIMON. Which is kind of normal for a lot of litter at the bottom of a briefcase. I think the fact that you or someone else

didn't disclose things is not a matter of great concern, at least from my perspective.

We talked about Mr. Nussbaum and the note. He went first to Mr. McLarty's office and asked to see Mr. McLarty; is that correct?

Mr. BURTON. Yes, sir.

Senator SIMON. Mr. McLarty was with the President, and so he asked you to come to his office?

Mr. BURTON. Yes, sir.

Senator SIMON. Then because of the closeness of Vince Foster to the President and First Lady, he asked that—she come down, understandably, and then she indicated that the family should be notified. She didn't want to get into matters of executive privilege; I think is understandable. I notice the notes that you have. Did you ask that any notes not be provided to the people who were investigating, any notes that you had taken?

Mr. BURTON. No, sir.

Senator SIMON. Mr. Gergen, did you ask that any notes you might have taken not be provided?

Mr. GERGEN. No, sir.

Senator SIMON. Mr. Quinn, did you ask any notes you might have taken not be provided?

Mr. QUINN. I don't believe so, Senator.

Senator SIMON. Mr. McLarty, did you?

Mr. McLARTY. No, sir. I tried to fully comply with any requests that were made.

Senator SIMON. Mr. Quinn, you've already testified that Mr. Nussbaum went further than you would have preferred in terms of opening to other agencies. But in talking about that first meeting, you said everyone involved in this conversation understood that they were looking for materials which might shed light on why Vince took his own life. Did you hear anyone talk about, well, we have to watch out, we're going to have some Whitewater papers here; we may have to cover up or anything like that?

Mr. QUINN. Not at all, Senator. To be honest with you, the term Whitewater at that point in time meant rafting to me. I had never heard of it; I was not aware of any concern about it. In the course of the discussions I was involved in, I never heard it mentioned. Nor did I hear anyone express any interest or felt need for ensuring that any particular kind of information on any subject like that or otherwise be, be held back.

Senator SIMON. Mr. Quinn, there was discussion of executive privilege, but was there any, any hint of covering up anything, not just Whitewater, anything else?

Mr. QUINN. No, sir, absolutely not.

Senator SIMON. Let me just ask the other three of you, were there ever any hints by anyone that we ought to be covering up anything—I don't care what it is—other than, obviously, you want to protect the Foster family for personal matters there. Anything at all?

Mr. BURTON. No, sir.

Mr. GERGEN. No.

Mr. QUINN. No, sir.

Mr. McLARTY. No, sir, Senator. I've already stated that in my opening statement.

Senator SIMON. Then finally, Mr. Gergen, you mentioned about the preoccupation with grief, and then we have a situation—and you’ve gotten involved in this—where there were some differences of opinion as to who has what responsibility. This is not the first White House you’ve had some experience with. Are turf wars somewhat common afflictions both in Congress and in the Executive Branch of Government?

Mr. GERGEN. Yes, sir, they’re virulent.

Senator SIMON. When you say “turf wars,” it looks like everybody is trying to get out and grab power, but people have a strong sense of responsibility, and they want to do their job conscientiously, and turf war does not necessarily mean that someone is trying to seek some attention or power necessarily, does it?

Mr. GERGEN. No, sir, it doesn’t. In this particular instance, it strikes me that what we were dealing with were differences of philosophy and differences of the right public policy approach between Mr. Heymann, for example, and Mr. Quinn—their sharp differences of view about the proper way to proceed. I don’t regard those as turf wars; I just regard them as differences of opinion.

Senator SIMON. In fact, so far as you know, each agency involved—whether it’s the White House Counsel’s Office, the Park Police, the FBI, or the Secret Service—all of them were well motivated; is that a fair assumption?

Mr. GERGEN. As far as I can tell, sir.

Senator SIMON. I thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Bennett.

Senator BENNETT. Thank you, Mr. Chairman.

Senator Grams has asked me if he could ask a couple of quick questions and I would yield that time to him.

Senator GRAMS. Thank you, Senator Bennett, for yielding time.

I just wanted to follow up—I had talked about two of the three preconditions: One was to notify President Clinton; the other, Lisa Foster; and the third was the executive privilege. Mr. Gergen, in earlier testimony—Senator Kerry said in a previous hearing that there was nothing in this note which would prompt anyone to hold it from law enforcement authorities. Yet, Mr. Gergen, you said in your sworn deposition that, “I recall there was some speculation about whether the contents of the note might prompt legal authorities to look further into the issues raised by the note. In other words, to go beyond the scope of the immediate investigation over his mental state.”

Were you concerned that they might go beyond the subject itself of Mr. Foster’s death? We heard testimony earlier from Park Police officials that there was a sense from the White House—and I don’t know if I’m paraphrasing this right or not—but from the Park Police officials, they said there was a sense from the White House that investigators might find something not related to Mr. Foster’s death. Is that what concerned you at all?

Mr. GERGEN. It did not concern me personally, sir.

Senator GRAMS. Mr. McLarty, would that concern you at all?

Mr. McLARTY. No, that did not occur to me, Senator.

Mr. GERGEN. But, Senator, I want to add to that. I think that there was some concern.

Senator GRAMS. It was a perception by the Park Police and he said, in fact, everybody involved with the investigation within his office had that perception, so it wasn't just one individual, but it was something that they had a perception that there might be something else that might cross their eyes that they shouldn't know?

Mr. GERGEN. I think that in the context of the discussions that took place among White House staff members on the day of the 27th, after we had come back from Chicago——

Senator GRAMS. I'm talking way earlier, about the 22nd itself. I don't know how this relates——

Mr. GERGEN. I'm sorry. I thought we were talking about the note. All of my references were to the note.

Mr. MCLARTY. As were mine.

Senator GRAMS. Go ahead with what you were going to say.

Mr. GERGEN. I'm not sure where we are.

Senator SARBANES. What page of the deposition is that quote from, could I ask the Senator?

Senator GRAMS. I don't have the page number.

Senator SARBANES. When you quoted Mr. Gergen in his deposition, what page of the deposition are you quoting from?

Senator GRAMS. We will find that.

Senator SARBANES. All right. Thank you.

Senator BENNETT. Could we come back to that?

Senator GRAMS. Fine. Thank you for yielding your time.

Senator BENNETT. Let me ask a few questions while you're looking for that.

Mr. Quinn, I found your exposition on privilege and national security matters very eloquent. Also, like the Chairman I found it a little hard to reconcile with access to the office by Maggie Williams and Patsy Thomasson. I understand Maggie Williams probably had the legitimate clearances, but here are these people going through his offices and Maggie Williams, according to Mr. O'Neill, taking files from the office. I do not find that easy to reconcile with the eloquent statement you made about the necessity of the White House Counsel to be absolutely pure in national security matters, attorney-client matters, and sensitive matters. It seems to me there was a clear sieve in that area as regarded people who are connected with the First Lady.

Now, Mr. Burton, let me go back——

Mr. QUINN. Senator, can I respond to that?

Senator BENNETT. Yes, surely.

Mr. QUINN. First of all, as I indicated to the Chairman, I was not aware at the time of my discussion with Mr. Nussbaum that anyone had been in the office previously and, second, I think that even had I been, the fact that Mr. Nussbaum may have permitted people into the office whom I would not have permitted does not mean that after that point, it was Katie, bar the door, and, let anyone in. It was still, I think, incumbent upon Mr. Nussbaum to ensure that classified and privileged materials were protected.

Senator BENNETT. What it boils down to is that the decision was unilaterally and solely Mr. Nussbaum's and he was comfortable with Maggie Williams and Patsy Thomasson, but not comfortable

with the Department of Justice and he made that decision unilaterally.

Now, let me come back, Mr. Burton, to the notes that Senator Grams came up with. You have written here—maybe we want to put that back up on the screen, if you will. It's 514. There it is on the screen again. I am assuming that the circle with the line through it means that that's a separation of whatever was ahead and above, and the word "precedent" doesn't apply to what came down below because there's a large—OK. You say, "two points. Far happier if"—you say that's "discussion"?

Mr. BURTON. Or "disclosure."

Senator BENNETT. Or "disclosure," not "discovery" as it is elsewhere, "if someone other than Bernie" and "if worried about Usher's Office, discuss with me." Could you address those two points, number one, why would people and who is it that would be far happier if the disclosure or discussion was somebody other than Bernie, who would be happier and why? Number two, tell us who is worried about the Usher's Office and why and what would you do about it if someone came to you?

Mr. BURTON. Senator, if you had asked me right after I wrote that note, I feel like I could give you an explanation that you would be a lot happier with. However, we're talking about notes that I wrote 2 years ago. We're talking about notes that are undated. We're talking about notes that sometimes include discussions at meetings, sometimes include discussions of telephone conversations, and sometimes are my own to-do list. That is just a preface, but basically, I do not remember whether this came out of a meeting or came out of a telephone call. What I do remember, and I thought about the notes a lot because we talked about them in my deposition—

Senator BENNETT. Excuse me, the names up above don't help you determine that?

Mr. BURTON. Actually, the names up above help me remember the time frame in which these were written. And to the best of my recollection, it would have been on the day after the note was turned over to the Park Police through the Justice Department. So on that day, we had a discussion in the White House—we had several discussions about how the contents of the note would be turned over to the press, whether the White House should do it, whether the investigators should do it and a lot of people had input and had opinions. As I said, I remember a very large meeting in Mr. McLarty's office. I think I listed several of the people earlier who were there that were involved in that kind of discussion.

Senator BENNETT. Would you think—they are your notes. Would you think the press would be happier if they didn't have to deal with Bernie, or the President would be happier if Bernie weren't his spokesman?

Mr. BURTON. I understand what you're asking and my response to that is it seems to make sense that it would be better for the speaker, if you will, the speaker—whoever's notes I'm transcribing here—for the speaker, they thought it would be better if Bernie was not the point person with the press.

Senator BENNETT. So this is not your opinion, this is somebody else's opinion and you're writing it down as a reporter?

Mr. BURTON. I don't recall. I don't recall one way or the other. It seems like it's probably somebody else discussing that. It seems like that's coming out——

Senator BENNETT. On the second point then, "If worried about Usher's Office, discuss with me." Who's the "me"? Is that you or is that the speaker again?

Mr. BURTON. I don't know. Again, we talked about it at length in my deposition. It would seem to make sense that it's me with the way the notes are written, except I didn't know anything about the Usher's Office. So in that sense, it didn't make sense. Perhaps someone in the—it has come out after the fact that Mr. Foster was working on a matter that involved the Usher's Office in his Counsel's Office duty, so perhaps it was someone in the Counsel's Office.

Senator BENNETT. I see the yellow light is on. I'll go back to Senator Grams to finish, now that he's got his citation.

Senator GRAMS. Thank you very much, Senator Bennett.

I wanted to answer the question that Senator Sarbanes had posed, where this quote came from by Mr. Gergen. It was in his deposition, the last question on page 69. I'll read the question and then the answer again:

Question: Do you recall any discussion in which White House personnel expressed concern that if the contents of the note became public, it might reflect badly on either the President or the White House?

The answer in the deposition Mr. Gergen gave is:

I recall there was some speculation about whether the contents of the note might prompt legal authorities to look further into the issues raised by the note. In other words, to go beyond the scope of the immediate investigation over his mental state.

Mr. GERGEN. Right.

Senator GRAMS. You were going to make a comment—before I interrupted you—about the note, the day after and the speculation and the concern evidently at a meeting that legal authorities, which evidently were adversarial in nature at this point in time to this group rather than allies, that they might even go farther beyond the scope of this investigation?

Mr. GERGEN. Yes, sir. Senator, the note, as you recall—I don't have the direct quotes in front of me, but I believe with regard to the Travelgate matter, said the FBI lied. He accused the FBI of lying, I believe—I can't—I don't remember the exact details of this, but there was a discussion within the White House of whether upon receipt of that or once the note was turned over to the authorities—this was discussions I recall we had on Tuesday, on the day when the note was turned over—whether that would prompt or the Attorney General would feel forced, having received that, to launch an investigation about what he was talking about. You know, did the FBI lie? That was the point that I was trying to make in the deposition.

Inevitably, there were points raised in the note that were clearly going to prompt a lot of attention by the press and by others, and that particular point was on the one about the FBI lying.

Senator GRAMS. Was there a feeling in the group that it was an "us versus them" type of mentality and by that, I mean other legal authorities, the FBI, the Department of Justice, which is really all members of Government and the branch and why there should

have been that wall set up you sit on this side of the room and we're going to sit on this side of the room mentality?

Mr. GERGEN. I don't think that was the point so much, Senator, but there were during the course of the day, that Tuesday, discussions about the ramifications of turning the note over to authorities—what would then flow from that event; we started to think through what happens publicly once the note is turned over. That concern did not change people's opinions about turning the note over to the authorities.

It was rather a question of once the note goes, here's what we should be anticipating. I think inevitably, there was a sense that once we turned the note over to the authorities, we were going to be at some arm's length relationship with regard to how that was dealt with by the legal authorities. As a matter of good legal practice, they had to maintain some distance from the White House on how they were then going to proceed.

Senator GRAMS. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Thank you very much, Mr. Chairman.

Mr. Gergen, I think in fairness to you, not only there but later in your deposition as well, because we went looking for a comment. You again mention this—in fact, in one of your answers you said, "might prompt law enforcement"—the question was law enforcement authorities to look more closely and you say, "Correct, especially the point about the FBI," and that's the statement in this writing by Vincent Foster, "The FBI lied in their report to the AG"?

Mr. GERGEN. Yes, sir. Thank you.

Senator SARBANES. I have to tell you, gentlemen, I've been sitting here listening to all this and I'm really struck by the tragedy of it all. I really want to just probe this question with you because Senator Bennett noted the fact that there had been a lifetime involvement on the part of some with Vincent Foster. Then he talked about secretiveness, but I must say to you, my perception is that there was a very deep concern and sensitivity to the privacy of the Foster family at this particular time in terms of its tragedy.

A great deal of focus on that, and I guess the question I want to put is—maybe I ought to put this to you first, Mr. Burton, because you were in on some of these things as they developed a little more than Mr. McLarty. Do you feel in hindsight that perhaps the close relationship that you and others had with Vincent Foster may have affected how you handled this matter and that your concern about according privacy to the family took a preeminent position or a very high—actually, it's interesting because I remember last week when this came up, Chairman D'Amato indicated at one point that he understood the sensitivities in trying to have Mrs. Foster see the note before it was turned over so she wouldn't hear about it otherwise.

I guess I ought to put that question to you and then maybe to you, Mr. McLarty, and then, Mr. Quinn and Mr. Gergen, maybe you could pick up on it because you were not lifetime associates so you might be in a position outside of that immediate circle to comment on the impact and, therefore, the behavior of people that were within that circle. Could you respond to that, Mr. Burton?

Mr. BURTON. Senator, at the time of Mr. Foster's death, I did my absolute best to carry out my job at the White House, my responsibilities to the President and to the Nation and the taxpayers that were paying my salary. In looking back at it now, I still grieve about Vince Foster's death. I still have personal thoughts when I see certain activities take place, and I think about things like I hope his son isn't watching, or I hope his family doesn't see some of the activities that are going on.

To this day that affects me. At the time it was probably exponentially affecting me. I thought about how it was affecting his family and friends. I mentioned earlier that I can recall with precise detail conversations among family and friends that I had that night and how we talked about Vince and as I had to explain to them the nature of his death. I also remember the personal-type things having to do with the funeral, getting of Mr. Foster's rings back to his widow. I remember those much sharply, much more—I'm much more perceptive about those, even to this day, than I am these other issues that have been more the focus of this hearing.

So that's a long way of answering your question with a yes. I think to be fair, I think it probably did affect my performance and my job duties.

Senator SARBANES. Mr. McLarty.

Mr. McLARTY. Senator, I am reluctant to say it did not have an impact on my performance or thoughts. I certainly tried very diligently for it not to have a negative or confusing impact because of the responsibilities I had at the time, and that really started with the decisions that had to be made of notifying the President, his movement to the Foster home in a safe and secure manner. Where the intersect came on the Foster family, I would hope and believe, Senator, we would try to show as much sensitivity to any family member of the White House that had this kind of tragedy or a similar tragedy. I believe we would.

The fact that you knew the family personally and was a lifelong friend, it perhaps added that sensitivity, but there were certainly family and personal interests. There were public interest matters that came quickly to bear on the notification of the press, how that was going to be done and balancing that with the sensitivity to the family. That's something Mr. Gergen, Mr. Gearan, and I had to work through early that evening, so there were matters continually like that.

I also made a conscious decision, Senator, and I believe it was the correct one, and I, to the best of my ability, carried it out, is that there were other important affairs of state that we had to keep moving forward. And while this was an important matter, it was critical that we continued to try to deal with these issues because the world clearly was not going to stop and to the best of our ability we did that. I cannot say without any reservation that the loss did not impact me or affect my judgment or thinking at the time. I hope it did not.

Senator SARBANES. Well, I see you made that comment in your statement as well, but you were really steeling yourself to your responsibilities, weren't you? I mean, if you could have given in to your real feelings, you would have been in a state of real emotional

despair, would you have not? I take it you were in a state and you sought to control it and proceed with your work; is that correct?

Mr. MCLARTY. That's well stated.

Senator SARBANES. I mean, Vince Foster was a lifetime friend of yours from childhood?

Mr. MCLARTY. Lifetime friend, yes, sir, and a colleague, and I had some opportunity to deal with those emotions that weekend after the funeral in Little Rock and the burial in Hope.

Senator SARBANES. Mr. Gergen, do you and Mr. Quinn have any observations on this point?

Mr. GERGEN. Senator, I believe that in the 20th century this suicide was unique within the White House, and there is no rule book for knowing how to deal with a suicide within the family. We were on uncharted territory in the first few days afterwards, and I've often wondered whether, in fact, in the first few days, the people who were as close as they were to Vince Foster and were dealing with the papers and the documents and that sort of thing—whether the grief did not, in fact, play a large role in how they were responding.

If you were going to sit down and write a rule book for the future for how to handle suicides in the White House or the Executive Branch or at a law firm or wherever it might be, you might want to suggest that those who are closest to it recuse themselves and let others handle it, because I think it was such a heavy burden on these people. I think—my judgment was in watching them—and I was not close to it those first few days—my judgment was that they were doing the best they could under the circumstances, but I do think that the grief did have a heavy influence upon the way things proceeded.

As to the note, it was quite striking to me in the conversation we had with the President the night when we went to him to say there was a note and to report our recommendation to turn it over to the authorities promptly—he immediately said we must turn it over to the authorities.

Even as he said we have to turn it over, he then went on to observe that the soul of Vince Foster would not be allowed to rest. That concerned him a great deal—that the widow and members of the family would continue to be the subject of a lot of speculation in the press. In some ways the tragedy, has been unfolding since then, as seen by the fact that we need to have these hearings, that you all feel—I think with adequate reason—that you need to look into this further.

In some ways, you have to feel that the overlying tragedy of all that's hanging over all of us is the sense that this family must continue to suffer the anguish of this kind of intense scrutiny.

Senator SARBANES. Mr. Quinn, do you want to add anything?

Mr. QUINN. Senator, I hesitate to draw conclusions.

I will say this: As you've heard, the sense of grief and the sense of shock were pervasive throughout the White House. There's no doubt about that. I've provided testimony on a limited disagreement I had with Mr. Nussbaum. It certainly was my observation that Bernie and Vince had grown close in the time they worked together. Again, without drawing any factual conclusion, there can simply be no doubt but that everyone in that office was deeply af-

fectured, deeply shocked, and was grieving at the time all of these decisions had to be made.

The CHAIRMAN. I want to ask a few questions. Mr. McLarty, do you recall having a meeting or conversation with Mr. Burton? I want to get back to those notes. Maybe you can put up that note, 514, in which the two points are made. Mr. Burton seems to feel that these are the reflections of someone else rather than his. Is that correct, Mr. Burton?

Mr. BURTON. Yes, sir. Logically, I got to that. I don't have an independent recollection.

The CHAIRMAN. All right. Let's see if we can't perhaps refresh your recollection. Do you, Mr. McLarty, have any recollection of a conversation with Mr. Burton or a meeting in which you might have expressed that you would have been far happier if someone other than Bernie—I guess as it relates first to the note, and second, the Usher's Office and the money paid to decorate—that they discuss it with you, "discuss it with me," meaning yourself. Do you recall that conversation? Would you have been the person that he's referring to?

Mr. McLARTY. Mr. Chairman, I don't recall this particular meeting, and I don't recall the matters that you're talking about or Mr. Burton discussing those with me.

The CHAIRMAN. Mr. Gergen, I want to ask you the same question. Do you recall a conversation and/or meeting in which you may have suggested to Mr. Burton that it would have been better if someone other than Bernie—now, I'm dropping out the word "discussion" or "discovery" and we're assuming—or "disclosure"—other than Bernie disclose this information?

Mr. GERGEN. Mr. Chairman, I don't recall that precise discussion. I do recall that we thought that Mr. Gearan ought to serve as the chief spokesperson for the White House on these matters.

The CHAIRMAN. Well, then, the note doesn't refer to Mr. Gearan. It says "if someone other than Bernie." And do you recall having a discussion about referring anybody worried about the Usher's Office to you?

Mr. GERGEN. No, I don't recall that. I do recall having discussions about the Usher's Office.

The CHAIRMAN. You do?

Mr. GERGEN. Yes, sir.

The CHAIRMAN. With Mr. Burton?

Mr. GERGEN. I can't remember who it was with, but there were staff discussions about the contents of the note. As I related earlier to Senator Grams, the contents of the note itself inevitably, once they went public, were going to spur some press inquiries about the various elements.

The CHAIRMAN. Sure. Were you aware of the fact that the President had not been advised for that 24 hours?

Mr. GERGEN. As you know, I came back commercially that evening, and Mr. McLarty told me as I left of his decision, that he wanted to come back to the White House to have a meeting and look at the note and reach a consensus before going to the President. When we had the meeting with the President that evening, I was not sure whether the President had been informed prior to that time or not.

The CHAIRMAN. OK.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Gergen, something you said struck me. You said that when you went in to see the President on Tuesday the 27th with information that the note had been found, his reaction was turn it over now?

Mr. GERGEN. Yes, sir.

Mr. CHERTOFF. There was no discussion about privilege or anything like that?

Mr. GERGEN. I don't recall a discussion about privilege.

Mr. CHERTOFF. Mr. McLarty, you understood that as of Monday night, when the President got back into Washington, back to the White House, Mrs. Clinton had already been made aware of the note; correct?

Mr. McLARTY. Yes, I was aware that Mr. Nussbaum had told me that he had told Mrs. Clinton about the note.

Mr. CHERTOFF. Are you aware of any instruction the President gave to turn over the note at any time before this meeting late in the day on Tuesday?

Mr. McLARTY. No, I was not aware of any instructions, Mr. Chertoff. To the best of my knowledge, when we informed the President of the note and, as I recall it, really had a plan of action this is what we were going to do, and he approved that or concurred with it, that was the first time he had heard about this.

Mr. CHERTOFF. Does it strike you as odd that the First Lady, having known about the note as of Monday night, and the President having come back to the White House on Monday night, that the President would not have been told by the First Lady that something had been found in Mr. Foster's handwriting?

Mr. McLARTY. Mr. Chertoff, I really didn't think about that. I made a decision not to tell the President until we had all the facts together and had made decisions and a plan of action, and that's what we did.

Mr. CHERTOFF. But at any rate, you're not aware of the President giving any instruction to turn the note over between the time that he arrived back at the White House on Monday night and the time you spoke to him on late Tuesday afternoon?

Mr. McLARTY. Mr. Chertoff, that's correct. In fact, part of our discussion with him was a plan of action, what we were going to do, and he concurred in that and basically approved of it.

Mr. CHERTOFF. Let me ask you this, Mr. Quinn, because I want to settle on—you've given us your position at some length on the issues of privilege and you read at some length from the oath that everybody signs when they deal or take responsibility for national security documents. I take it Mr. Nussbaum, to your knowledge, signed that same oath; right?

Mr. QUINN. I assume that to be the case.

Mr. CHERTOFF. That's an oath that requires one not only to safeguard documents against intentional misuse but to safeguard them even against negligence, negligent dissemination; correct?

Mr. QUINN. That's how I read it.

Mr. CHERTOFF. I take it that it would be, in your mind, at least negligent to send a person with no security clearance into an area

where there might be, as you put it earlier, even code word cleared documents without supervision; correct?

Mr. QUINN. If one thought that that might be the case. I have no idea what was in Mr. Nussbaum's mind at any point in this process in terms of whether he knew or didn't know whether such documents might be present.

Mr. CHERTOFF. Well, you knew as of the 22nd that one of the concerns about what's in the office is that they might be national security documents; right?

Mr. QUINN. It was one of the concerns I expressed.

Mr. CHERTOFF. Does it seem to you that that concern would never have occurred to Mr. Nussbaum 2 days earlier on the 20th?

Mr. QUINN. I can't speculate as to whether it did occur or might have occurred to him.

Mr. CHERTOFF. Did you know that Mr. Watkins selected Patsy Thomasson as the person to be sent in to look for a note in Mr. Foster's office?

Mr. QUINN. I did not.

Mr. CHERTOFF. Are you aware of any discussions anybody ever had with Mr. Watkins about whether it was appropriate to pick a person who had received no security clearance as the designated individual to search an office with possible code word classified documents?

Mr. QUINN. I'm not aware of any such discussions. To the best of my recollection, the first meaningful discussion I had of this search was the discussion you've heard about earlier when Mr. Nussbaum and I met on this, and we exchanged views.

Mr. CHERTOFF. In that meaningful discussion, Mr. Nussbaum didn't say you know, Jack, I think I blew it on the 20th because I left Patsy Thomasson, who has no security clearance, alone in a room looking through drawers in a briefcase which might have national security documents? He didn't say that to you?

Mr. QUINN. No, he didn't say that to me.

Mr. CHERTOFF. I'm sorry, Patsy Thomasson?

Mr. QUINN. No, he didn't indicate to me that she had searched the office.

Mr. CHERTOFF. Did he tell you he was going to bring Maggie Williams in later that day to do a review of attorney-client privileged documents in Mr. Foster's office?

Mr. QUINN. No, he did not.

Mr. CHERTOFF. I take it you're aware that there was a category of documents, or you later became aware that there was a category of documents in Mr. Foster's files that were removed and ultimately placed in the custody of Williams & Connolly; right?

Mr. QUINN. I have heard that. I have no firsthand knowledge of that.

Mr. CHERTOFF. And you would agree with me that documents that are official executive privilege documents would not be removed to a private law firm?

Mr. QUINN. I'm not aware that any documents that were official executive privilege documents were so moved.

Mr. CHERTOFF. Is it your understanding—let me withdraw the question and ask it this way. On the 22nd, was it your understand-

ing that there were personal documents of the Clintons subject to their personal attorney-client privilege in Mr. Foster's office?

Mr. QUINN. I do not believe that that came up one way or the other. I don't believe that anyone, including Mr. Nussbaum, indicated that there were or there weren't such documents in the office.

Mr. CHERTOFF. You know who Maggie Williams is; right?

Mr. QUINN. Of course.

Mr. CHERTOFF. She's not a lawyer; right?

Mr. QUINN. I don't believe she is.

Mr. CHERTOFF. She certainly does not work for Williams & Connolly or any other private attorneys who were representing the Clintons; right?

Mr. QUINN. No, but she's the Chief of Staff to the First Lady and the agent of the client—one of the clients in question.

Mr. CHERTOFF. She's an agent—a Government employee, an agent of a client working in an official capacity; right?

Mr. QUINN. Correct.

Mr. CHERTOFF. She is not an agent of an attorney or a client with respect to personal documents; right?

Mr. QUINN. Well, I'm not sure what personal documents we're talking about.

Mr. CHERTOFF. I'm just asking you in general. Is it your understanding that she is an agent of the lawyer or the client as far as personal documents that the Clintons had?

Mr. QUINN. Again, I don't know that there were personal documents. There may well have been, but I don't know that myself.

Mr. CHERTOFF. Let me ask you a couple questions, Mr. Gergen, before I surrender my time, if I can. Your indication is to us that you viewed this period of time, this week, as a period where everyone was overwhelmed with grief; correct?

Mr. GERGEN. I thought I said, sir, that I thought it had a heavy influence.

Mr. CHERTOFF. Did anyone ever explain to you why during that week with so much going on, preparing to go to Arkansas for the funeral, assimilating the fact of Vincent Foster's death, why on that Thursday it was necessary to collect personal documents for the Clintons and move them out of Mr. Foster's office?

Mr. GERGEN. No, sir.

Mr. CHERTOFF. When did you first learn that personal documents of the Clintons had been removed from Mr. Foster's office and put in the residence?

Mr. GERGEN. I believe, Mr. Chertoff, the first time I learned of that was when Mr. Collier came to me.

Mr. CHERTOFF. When was that?

Mr. GERGEN. As I say, I don't have an exact date on it, but I believe that occurred after the note was turned over to the Park Police on that Tuesday night.

Mr. CHERTOFF. I want to make sure you didn't misunderstand the question. I asked you when were you first aware that personal documents were removed from the Foster office and taken to the White House residence?

Mr. GERGEN. Oh, I'm sorry, I did not understand that question. I'm sorry. I was talking about the division of the documents into three piles.

Mr. CHERTOFF. No, I mean the removal of documents and the placement of the documents in a closet on the third floor of the White House residence?

Mr. GERGEN. It was some months later.

Mr. CHERTOFF. How did you learn about it?

Mr. GERGEN. I learned about it through someone else who was working at the White House some months later.

Mr. CHERTOFF. Who was that?

Mr. GERGEN. Mr. Joel Klein, who was then Deputy Counsel.

Mr. CHERTOFF. How did you come to learn about it from Mr. Klein?

Mr. GERGEN. He and I had a friendship that developed over time. We had known each other before we came to the White House. As you know, he came in later as Deputy Counsel, and we had a relationship that became quite close in terms of talking about where the White House was and what it ought to be doing.

Mr. CHERTOFF. What was the context of your learning about this?

Mr. GERGEN. I believe it was a private conversation in my office.

Mr. CHERTOFF. Was it triggered by some event?

Mr. GERGEN. Not to my knowledge. It may have been triggered by the fact that that's when he learned of it.

Mr. CHERTOFF. About when was that relative to the period of time you served in the White House?

Mr. GERGEN. I'm sorry, I can't place that with any precision. There was a fairly long passage of time before I learned of that.

Mr. CHERTOFF. Was it after it had leaked out to the press?

Mr. GERGEN. It was before it leaked out to the press.

Mr. CHERTOFF. Did he come to you to advise you about the fact that there was a problem in his discovery of the fact that the documents had not gone directly to the private attorney's office?

Mr. GERGEN. I'm not sure that was the exact context. He and I sometimes had private conversations to, in effect, counsel each other about what we were doing. He was in the legal office and came to me to have a private conversation about that, as I recall.

Mr. CHERTOFF. Was he asking for your advice or was he giving you his advice?

Mr. GERGEN. I believe that he was sharing it with me to see what kind of response I had and what I might think about how he should proceed.

Mr. CHERTOFF. What was the question about how to proceed? What was the issue for decision here?

Mr. GERGEN. It was not unlike other kinds of conversations one would have with someone on the staff. I think he had learned of it and he wanted to share it with me privately and I did not talk to anyone else about it. And it was more in the context of sort of, here's where we are, and eventually, I think at that time there was already some assumption that there would be some investigations or—I guess it may well have been that the Independent Counsel had been appointed by then and it was clear to him, as it was clear to me, that in any investigation that the removal would become known.

Mr. CHERTOFF. So was there a concern about what would happen when it publicly emerged or it emerged in the course of an inves-

tigation by the Independent Counsel that contrary to the prior impression, the documents had actually been reposed in the White House residence for a period of time?

Mr. GERGEN. I'm not sure we discussed it in terms of the public response so much as simply the legal implications. I do not think at that time that either he or I knew anything about the circumstances surrounding that event. It was much later when I learned—I'm not sure how; it may well have been through the press reports—about how it actually took place.

Mr. CHERTOFF. Didn't you tell Mr. Klein—Mr. Chairman, if you want me to come back to it afterwards, I will. If I can keep going, I would be happy to keep pursuing it.

The CHAIRMAN. I'm going to ask Senator Sarbanes if he would allow Mr. Chertoff to continue on, just so he can complete this line, but if you want, we could go here and then we'll just have to return. So I think in the interest of time—

Senator SARBANES. I think that's sensible, provided it's not going to be—how long do you expect to go?

Mr. CHERTOFF. Oh, 3, 4, 5 minutes, something like that.

The CHAIRMAN. Thank you, Senator.

Mr. Chertoff.

Mr. CHERTOFF. I want to try to pin this down, Mr. Gergen. Mr. Klein comes in to you and tells you he's discovered this fact; right?

Mr. GERGEN. Correct, sir.

Mr. CHERTOFF. How does he find out about it?

Mr. GERGEN. I don't know the answer to that question.

Mr. CHERTOFF. Did he tell you who he learned it from?

Mr. GERGEN. He did not. He was careful about that. He told me that in confidence and I protected that confidence. He really wanted to discuss it. There was nothing either one of us could do about it. He wanted to think about it. He wanted to have somebody else he could mull it over with.

Mr. CHERTOFF. What was to be mulled, was it a question of telling the Independent Counsel about it?

Mr. GERGEN. No, I don't think that was the issue at all. Neither one of us was in that chain of information.

Mr. CHERTOFF. Was it a concern that maybe someone had previously not mentioned this in an interview with the FBI or the Independent Counsel?

Mr. GERGEN. I don't recall that being the concern. It was simply the fact that the documents had gone there on the way to Williams & Connolly. Neither of us, I want to stress, knew the surrounding circumstances.

Mr. CHERTOFF. So, of course, you told Mr. Klein why don't you find out what went on; right?

Mr. GERGEN. No, that was not the kind of conversation we had. It was more—it was sort of "stay tuned."

Mr. CHERTOFF. Was it stay tuned waiting to hear what happened or did you suggest or did Mr. Klein suggest that it would be appropriate to go out and get the answer to what happened?

Mr. GERGEN. Mr. Chertoff, it's been my experience that when there's an independent investigation going on, it's inappropriate for those in the White House staff to start pursuing their own personal investigations.

Mr. CHERTOFF. Are you comfortable at this point in time that this conversation occurred after the Independent Counsel had already engaged in his investigation?

Mr. GERGEN. I can't be absolutely certain of that. That's my memory, but please don't hold me to that. I can't remember exactly what day that was. He and I, as happens in every organization, had a confidential relationship that we protected, and I have a very high respect for him. I think he served extremely well in the White House. It was on the basis of just sharing a confidence.

Mr. CHERTOFF. I understand it, but that wasn't quite what my question was. My question was this conversation occurred after the Independent Counsel was engaged in his work; right?

Mr. GERGEN. So far as I can remember, sir.

Mr. CHERTOFF. You're telling us the reason you and—neither you or he pursued getting the facts about this was because you were concerned that any inquiry on your part would somehow be perceived negatively by the Independent Counsel?

Mr. GERGEN. I can't remember. It was not something I was going to pursue in my capacity. I was not clothed with that kind of authority and I think it would have been regarded as quite inappropriate for me to proceed. I think it was really more a question of him wanting to think through with somebody whom he trusted.

Mr. CHERTOFF. I gather he was concerned that this might be a real problem?

Mr. GERGEN. He was concerned. Until one knows the surrounding circumstances, one doesn't know how to evaluate.

Mr. CHERTOFF. Because it hadn't come out previously; right?

Mr. GERGEN. Correct. And neither one of us, as I recall at that time, knew the circumstances surrounding it.

Mr. CHERTOFF. Was this before or after the First Lady gave her press conference in April 1994?

Mr. GERGEN. I simply cannot answer that question.

Mr. CHERTOFF. Were you involved in the preparations for that press conference?

Mr. GERGEN. This was the press conference with regard to the investments?

Mr. CHERTOFF. Yes, a whole series of things, including the handling of documents in Mr. Foster's office. Were you involved in that?

Mr. GERGEN. I did not brief her with regard to that press conference, sir.

Mr. CHERTOFF. You had no involvement in that?

Mr. GERGEN. As I recall, I did not meet with her prior to that press conference.

Mr. CHERTOFF. I asked a little bit of a different question, not did you meet with her, did you have involvement with her?

Mr. GERGEN. As I recall, she was briefed by her attorneys and not by the staff. I may be wrong about that, but I was not involved.

Mr. CHERTOFF. You mean her private attorneys?

Mr. GERGEN. Yes, sir.

Mr. CHERTOFF. Is that a customary thing with press conferences involving the First Lady, to have them briefed by private attorneys?

Mr. GERGEN. With all fairness to her, after all, the material had moved over to the private attorneys. The question of the investments was—Mr. Kendall was looking into that. He was leading the inquiry on her behalf and determining what had happened, so it seems to me it was only natural that she consult with the same person who was conducting the inquiry.

Mr. CHERTOFF. Do you recall what position she took in the press conference regarding the handling of the documents?

Mr. GERGEN. I do not, sir. I have not reviewed that in some time.

Mr. CHERTOFF. That's not connected in your mind with this issue involving Mr. Klein coming to you about the discovery of the documents having been held in the residence?

Mr. GERGEN. With due respect, I can't say with precision——

The CHAIRMAN. Mr. Gergen, I think that possibly what Mr. Chertoff is suggesting is given the fact that there had been a press conference in which the First Lady revealed the circumstances under which the papers were moved, and the fact that we find out some months later that they were stored in the White House closet upstairs for a period of time, it would seem to fit with a recollection that it would have taken place after the press conference that Mrs. Clinton held, the discovery as to what events took place.

Now, if you can't recall that, you can't recall that. Maybe that refreshes your recollection. I don't know. I'm not pushing you, but I think that's the point that Mr. Chertoff is making——

Mr. CHERTOFF. Exactly.

The CHAIRMAN. —that logically, you would have a confidential discussion with the Deputy White House Counsel, Mr. Klein, your friend and shared ideas confidentially of some concern after the public pronouncement about how the documents supposedly were handled and the inconsistency as it related to those facts that later came out. But again, if you can't recall the timing, you can't recall the timing, but that would seem to be a more logical pattern and I think that's what Mr. Chertoff——

Mr. CHERTOFF. Exactly.

Mr. GERGEN. Mr. Chairman, I appreciate you enlightening me because I wasn't sure where this line of inquiry was going.

The CHAIRMAN. Nor was I.

Mr. GERGEN. Having said that, I can't recall that—that did not stick in my mind as being the critical point that Joel was raising with me.

The CHAIRMAN. I'm not trying to press you on it. I'm suggesting that that was the motivation for Mr. Chertoff's line of questioning and I want to thank Senator Sarbanes and Mr. Ben-Veniste for allowing Mr. Chertoff to complete that train of thought and questioning.

Senator Sarbanes.

Senator SARBANES. Mr. McLarty, I wanted to focus back on the day when you went in and told the President about the note. Some questions were raised earlier about well, didn't he inquire about it, didn't he ask a lot of questions and so forth. Now, as I understand it, you all went in and briefed the President and laid out for him—let me ask you the question, did you lay it all out, how the note was found, what the note said, et cetera, so at the end of that briefing, there weren't any questions really for the President to ask?

Mr. MCLARTY. Senator, that's correct, and that's what I tried to explain earlier in response to another question. We did give him a briefing and we had a recommended plan of action that we were already beginning to implement.

Senator SARBANES. Your recommendation was to turn it over to the investigators?

Mr. MCLARTY. Yes, that's correct.

Senator SARBANES. The President said that's what you ought to do?

Mr. MCLARTY. He did. He agreed with it promptly.

Senator SARBANES. So there wasn't really a question of the President, in effect, of his own accord directing you to do this. This was the plan of action that was laid before the President?

Mr. MCLARTY. Yes.

Senator SARBANES. The President says that's right, that's what you ought to go ahead and do; correct?

Mr. MCLARTY. That's correct. He was concurring and approving.

Senator SARBANES. Did the briefing spell out for the President how the note was found?

Mr. MCLARTY. Yes, as I recall it did. I think, like in any briefing, we tried to put it in a succinct clear way and anticipate what questions might be asked and just lay it out in a very clear manner and that's what we did. We had a plan of action, a recommendation, he concurred or approved.

Senator SARBANES. That was you, Mr. Gergen, and Mr. Nussbaum?

Mr. MCLARTY. As I recall, it was the three of us.

Senator SARBANES. Does that square with your recollection of this occasion, Mr. Gergen?

Mr. GERGEN. It does, Senator. As I testified earlier, I believe Mr. McLarty had already set up a meeting with the Attorney General for 7:00 p.m. that evening prior to the time we saw the President. In other words, he had things on track for turning the note over to the Attorney General.

Senator SARBANES. As I understand it, that meeting was for another purpose—had originally been set up for another purpose and you simply decided to piggyback this matter on to that meeting; correct?

Mr. MCLARTY. Senator, I can't recall. You may be correct in that regard. At any rate, we did have the intention to move forward that morning and, as I've already explained, the real complication was Mrs. Foster's unexpected travel to Washington. That's really what slowed the process down.

Senator SARBANES. You slowed it down to await for her arrival in Washington?

Mr. MCLARTY. That's correct.

Senator SARBANES. Then you went to the President about it, and then you went to the Attorney General about it?

Mr. MCLARTY. I believe that's right. I can't recall whether we told Mrs. Foster before the President or vice versa. I honestly don't remember that sequence of events, and I don't recall whether the meeting had been set up with the Attorney General. It may well have been. I think by that time we knew in our mind we would be covering this subject matter with her.

Senator SARBANES. Did you want to add something to that, Mr. Gergen?

Mr. GERGEN. Senator, as I recall—my memory may be faulty on this—Mr. McLarty and I agreed that it was imperative that the note be turned over that day, that night, that we had to meet these conditions, the conditions we talked about earlier and that we had to go ahead on the Lisa Foster front by midafternoon.

It was simply a question of getting the President's approval, which we expected we would get, and Mr. McLarty had already set up, because I do remember mentioning to the Attorney General sometime that afternoon, in a meeting, I believe, in the Roosevelt Room, that I looked forward to seeing her that evening just to double-check that it was on her schedule, because I thought we were moving on the schedule that was going to turn that note over to her at 7:00 p.m. that evening.

Mr. BEN-VENISTE. Thank you, Senator Sarbanes.

Can we put exhibit Z514 up on the screen, please. Let me direct this question to you, Mr. Gergen. With respect to the disclosure of the content of the note, do you recall that there was discussion either on the 28th, or the 29th, or thereabouts with respect to the Department of Justice's position about what agency should actually disclose the content of the note?

Mr. GERGEN. Mr. Ben-Veniste, I cannot recall exactly what day we had that discussion, but we did have such a discussion.

Mr. BEN-VENISTE. Is it correct, sir, that the Department of Justice made a strong recommendation, indeed, probably in the conversation you were involved with Mr. Heymann, that it ought to be up to the police as to when the disclosure of the content of the note would be made?

Mr. GERGEN. Yes. As I think I've testified, Mr. McLarty and I had discussed this, and perhaps Mr. Gearan was part of these discussions as well, that it was critical that we have a Department of Justice agreement on how we proceed.

Mr. BEN-VENISTE. So was it clear that shortly after the note was discovered, it was communicated to the White House that the Department of Justice would be far happier if the contents of the note were disclosed by someone other than White House Counsel, that is the police?

Mr. GERGEN. That's correct.

Mr. BEN-VENISTE. Would that comport with the interpretation of Exhibit 514 as a meeting which you attended where such a statement may have been made?

Mr. GERGEN. I'm not quite—are we now referring to Mr. Burton's note?

Mr. BEN-VENISTE. Yes. You see at the top of the note it may be that you were present at a meeting although there is this ellipse there. In any event, at some point it is clear, is it not, this in your presence, it was disclosed that the Department of Justice would be far happier if the disclosure of the note were made by someone other than White House Counsel's Office?

Mr. GERGEN. Yes. You'll recall those are the notes I had from the conversation Mr. Gearan and I had with Mr. Heymann. That was Mr. Heymann's view and we agreed to it.

Mr. BEN-VENISTE. With respect to the issues of the Usher's Office, Mr. Burton, do you know whether the Usher's Office was something under the jurisdiction of White House Counsel?

Mr. BURTON. I knew it was something that Mr. Foster had been working on prior to his death. I do not know much about it beyond that.

Mr. BEN-VENISTE. So then it may have been in that conversation that this could have been a comment made by Mr. Nussbaum, if he were present at such a meeting with respect to any inquiry or question about the Usher's Office?

Mr. BURTON. I think it could have been Mr. Nussbaum that said that.

Mr. BEN-VENISTE. Mr. Gergen, let me direct this question to you with respect to Mr. Collier's complaints, Mr. Collier being Chief of Staff to the Secretary of the Interior. I take it, it is everyone's recollection, that these complaints were made subsequent to the discovery of the note and the fact that it became a public matter that a note had been found. The contents of the note took longer in terms of public disclosure, but the fact that a note had been found was pretty contemporaneously revealed. Do you recall that?

Mr. GERGEN. Yes, although I don't think that was the connecting issue.

Mr. BEN-VENISTE. Mr. Collier phoned you on or around the 29th, I think you indicated, 28th or 29th?

Mr. GERGEN. As best I can piece it together, I cannot swear to it, it's conceivable that he called me on the 23rd, but I believe it was on the 28th or 29th. Again, I think it was a combination of events especially the finding of the note, which then prompted him to move.

Mr. BEN-VENISTE. Mr. Burton, do you recall that Mr. Collier had phoned you and had complained to you in terms of the way White House Counsel was keeping these decisions to itself and complained that it was too close to Mr. Foster to be making these decisions?

Mr. BURTON. I recall that Mr. Collier put in a call to the Chief of Staff's Office and that I took the call and he had some complaints about the way the search of the office was conducted.

Mr. BEN-VENISTE. Let me ask you, Mr. Burton, you were present at the end of the search. At any time did the Park Police complain to Mr. Nussbaum or anyone in the Counsel's Office or to you about the way the search was conducted or the procedures that were employed?

Mr. BURTON. No, sir.

Mr. BEN-VENISTE. The first time you heard these complaints were from Mr. Collier after the note had been found?

Mr. BURTON. Yes, sir.

Mr. BEN-VENISTE. Is that correct, Mr. Gergen?

Mr. GERGEN. To the best of my recollection.

Mr. BEN-VENISTE. Is it correct, sir, that there was some adverse publicity critical of the Park Police following the discovery of the note?

Mr. GERGEN. I believe there was. Mr. Collier's point was that there were complaints bubbling up from within the Park Police. I must say, sir, that was what I was beginning to hear that from

members of the press, right around that same period of time, contemporaneously with his call and his visit when we got together.

Mr. BEN-VENISTE. So, if I understand the sequence of events correctly, at a time when the note had been found and now there is criticism of the Park Police investigation, there begins to be some rumbling and some finger pointing about who might be responsible if there's any screw-up in this investigation?

Mr. GERGEN. It struck me that concerns being expressed within the Park Police were very similar to the kind of concerns Mr. Heymann faced from within his own Department, and they weren't sure what they were then facing. Both institutions wanted to make absolutely certain that they were not compromised.

Mr. BEN-VENISTE. With respect to Mr. Quinn's point, Mr. Chairman, I think the record should be clear with respect, at least, to Mr. Adams in terms of his security status, and I quote from page 77 of Mr. Adams deposition of June 29, 1995.

Question: Do you have a security clearance?

Answer: Yes.

Question: I'm not going to ask you how high it goes, but let me ask you, does it go above top secret?

Answer: I don't think—I don't think it does. I think it's top secret. The stuff I have done at the Department I've rarely had a need for security clearance. I think it's top secret. I think that's what normal line attorneys have. I don't have anything above that.

So does that comport with your understanding that sometimes Department of Justice attorneys have higher clearances but sometimes they don't, Mr. Quinn?

Mr. QUINN. I believe that to be correct.

Mr. BEN-VENISTE. Mr. McLarty, let me conclude my questions with you, if I may, sir. Questions were asked of you earlier today, the implication of which was because there was no salutation on Mr. Foster's note or no conclusion or no signature, that there may have been some other page or pages associated with this writing.

Let me ask you, sir, whether you were aware of the fact that Mrs. Foster was indeed interviewed by the FBI about the circumstances of this note and its contents. And she, in her interview, stated that she believed the note had been written by Mr. Foster in their residence somewhere around July 10 or 11, and that the reason why the note was written, according to Mrs. Foster, was that she had suggested to Mr. Foster that he write down everything that was troubling him, that he was being criticized about. Mrs. Foster stated that she felt that this note was the beginnings of an opening statement that he was drafting in the event that he had to testify before Congress.

Mr. McLARTY. Mr. Ben-Veniste, I didn't know about the FBI interview. I had heard about a possible list that Mrs. Foster had asked Vince to make over the course of the last several months. I did not know the source of it.

Mr. BEN-VENISTE. But in terms of whether there would be a salutation or a conclusion in terms of the material that you saw, this would not surprise you?

Mr. McLARTY. If it were that type of list, it would not.

Mr. BEN-VENISTE. I take it it did not strike you as being a suicide note when you read it?

Mr. McLARTY. I was perplexed by it, and it did not strike me as a suicide note when I first heard it over the telephone, or later, for that matter.

Mr. BEN-VENISTE. Thank you, sir. I have nothing further.

Senator SARBANES. Mr. Chairman, could I just ask Mr. Quinn a quick question?

Mr. Quinn, as I understand your position, suppose I said to you as a premise there's no national security material in that office, none. I take it you still assert a position that there are privileged matters in that office, either executive privilege or attorney-client privilege which would lead you to give, in effect, the same position that you've asserted here today; is that correct?

Mr. QUINN. That is correct, Senator.

Senator SARBANES. So the position you asserted and took with Nussbaum did not depend upon the presence of national security material. That was another argument you used and was an additional leg, in a sense, for your position, but as I understand it, you said if a lawyer simply allowed the office—general availability of the office, he wouldn't be meeting his responsibilities; is that correct?

Mr. QUINN. That is correct, Senator. I was concerned, as I indicated, about the several categories of documents, privileged, both attorney-client, conceivably executive privileged documents and also what I referred to as sensitive materials, perhaps including personal papers.

Senator SARBANES. I mean, one of those items could be missing. You would still take the same position; is that correct?

Mr. QUINN. That's correct, Senator. The important thing, I believed, was that in the first instance, a person who was both privy to the privilege and had the proper security clearance ascertained whether or not these issues were in play.

Senator SARBANES. Thank you.

The CHAIRMAN. And of course, I note that Mr. Heymann has testified and has given an affidavit that a procedure that would protect privilege and classified information had been worked out whereby Mr. Nussbaum and members of the Justice Department would review the outer page and, maybe, the second page of the documents, and then determine how to handle them.

It is implausible to believe that the reason this process was not followed was concern about national security or classified information, at least, in this Senator's mind after hearing the testimony. Of course, Mr. Nussbaum still has to come forward, but I don't think he will maintain he was worried about the nature of classifications—whether it related to important nominations, and so on—when the process for reviewing these papers was changed.

It just does not make sense, given the fact that he was aware that both Maggie Williams and Patsy Thomasson had access to and, indeed, he saw them at least on one occasion in the office looking for the note. I think we stretch the line of reasoning to absurdity when we believe that somehow career officials in the Justice Department would compromise national security.

Now, I understand that Mr. Quinn has also testified and his testimony stands for itself—by the way, he was not responsible for the implementation of this agreement, nor reading the agreement.

We'll also find out whether Mr. Nussbaum thought there was an agreement. We have heard that Justice Department officials felt there was, so we'll lay that out.

But I think it's rather incredulous to believe that Mr. Adams and Mr. Margolis from the Justice Department—as a matter of fact, Mr. Adams worked in the White House and Mr. Margolis was tremendously respected—that the reason the review of the documents as agreed upon did not go forward was because somehow they may have lacked the proper security clearance.

I'm still very troubled by the discovery of the note. We now have testimony that Mr. Burton saw it—and I commend you for your candor and the manner you described things at the bottom of the bag—a yellow tab, Post-it, I think you said. That comports with what at least two others have said. One being Mr. Foster's secretary when she indicated the existence of pieces of yellow paper in the bottom of the bag. Mr. Spafford, who represented the Foster family, overheard Mr. Sloan say to Bernie, there are scraps of yellow paper in the bottom of Vince's bag.

It raises a question when people are so anxious to ascertain whether Vince left any indication why he was in this state, why he would have—what was disturbing him, so I just say that is an area of concern to this Senator and maybe others, and we're going to hear from Mr. Nussbaum and others who may be able to give additional light to the Committee. I want to thank the witnesses—

Senator SARBANES. Mr. Chairman, could I ask one more question of Mr. Quinn?

The CHAIRMAN. Certainly.

Senator SARBANES. The discussion heretofore generally has been over executive privilege and attorney-client privilege and not over national security matters, although as you point out those might have been in the office as well.

I gather, though, you differ from Mr. Heymann's—do you understand what Mr. Heymann's position was on this matter?

Mr. QUINN. I believe I do, Senator.

Senator SARBANES. You differ with that?

Mr. QUINN. I do. Let me just say—

Senator SARBANES. You've set out your reasons here today and you take a different point of view, and actually, Mr. Heymann, I think, in his testimony, in effect—or if he were here would concede that legally your position could be sustained, but he advocated it as a practical matter to deal with these situations?

Mr. QUINN. Yes.

Senator SARBANES. That's the only point I want to make.

Mr. QUINN. Senator, let me just say again, the national security concern was one of the concerns. There might, for example—just for example, there might have been a document relating to war powers action that Mr. Foster had responsibility for reviewing. I don't think it's absurd at all—in fact, I think it would have been irresponsible to have exposed that to people to whom it should not be exposed.

And even if you brush aside cavalierly the national security concern, the attorney-client issue is still a very real issue and I submit to you that neither Mr. Chertoff nor any of the other experienced

lawyers in this room would have proceeded in the fashion that Mr. Heymann was pushing on Mr. Nussbaum.

The CHAIRMAN. I want to thank all of you for being here today and for your testimony. Before the Committee goes into recess—and we will come back in tomorrow at 9:30 a.m. for the purposes of continuing—I want to report that the Committee has unanimously reported out the following nominees, Maria Haley to be a Member of the Board of Directors of the U.S. Export-Import Bank and Herbert Collins to be a Member of the Thrift Depository Protection Oversight Board. We stand in recess until 9:30 a.m. tomorrow morning.

[Whereupon, at 3:20 p.m., the hearing was adjourned, to reconvene at 9:30 a.m., on Tuesday, August 8, 1995.]

[Prepared statement and appendix supplied for the record follow:]

PREPARED STATEMENT OF THOMAS F. "MACK" McLARTY III

Mr. Chairman, Senator Sarbanes, and Members of the Committee, my name is Mack McLarty. I am Counselor to the President.

I served as Chief of Staff to the President from his Inauguration until June 17, 1994. I was Chief of Staff at the time of Vincent Foster's tragic death in July 1993.

I understand this Committee is investigating the handling of documents in Mr. Foster's office in the days following his death. To assist the Committee in its inquiry, I will summarize what I know about the matter.

Vince Foster was one of my oldest friends and I had the highest regard for him personally and professionally. His death was an enormous personal tragedy as well as a loss to the President and the people of this country. It is important, however, for the Committee and for the American people to understand some context. Although the inquiry into Vince Foster's death and the review of his office were important, it was my job, and that of others, to ensure that the tragedy not disrupt the ongoing responsibilities of the White House and the Administration's agenda. I knew that was what Vince would have wanted us to do and everyone I worked with did their very best to move forward while they were grieving.

The days following his death were extraordinarily full. In addition to making arrangements to transport the President and a large party to Little Rock for the funeral, and responding to hundreds of condolence calls and letters, we were confronting the need to get Federal emergency relief to the flooded areas of the Midwest, to handle the complexities of budget reconciliation, and to deal with important issues of foreign policy. Those and other matters vitally important to the American people could not be put aside even though the personal loss we all felt was enormous.

People did their very best and responded in the highest traditions of public service. Those people responsible for Mr. Foster's office and its contents—principally White House Counsel and his staff—did the same. Although there were apparently differences of opinion of which I was not aware, I never heard, nor do I have any reason to believe, that a decision to conceal matters relating to Whitewater, or anything else relating to the President's private affairs, motivated their decisionmaking.

I first learned of Mr. Foster's suicide sometime after 9:00 p.m. on the evening of July 20, 1993, from my staff director, Bill Burton. The President had just begun a live television interview in the library of the residence. I had left the library and was in the hall when Mr. Burton gave me the news. Mr. Burton told me that a body had been discovered in Fort Marcy Park and that it was an apparent suicide. Although the authorities believed it to be Vince Foster, the body had not been positively identified.

I was shocked and saddened by the news. I had known Vince Foster for most of my life, and I had the highest regard for him both personally and professionally. Since the body was not positively identified, I had some small hope that it was not Vince Foster.

I decided not to interrupt the President's interview until I had received confirmation that it was Mr. Foster. I called the First Lady, who was in Little Rock to visit her mother and to make a speech at Arkansas Children's Hospital. I told her that the authorities believed Mr. Foster had committed suicide, although the body had not yet been positively identified. Like the rest of us, the First Lady was shocked and upset. She did not raise with me any matter regarding Mr. Foster's office or any documents in it.

After I received confirmation that it was Mr. Foster, I went into the library and told the President that he needed to conclude the interview. The President and I went upstairs to the second floor of the residence where I gave him the news. The President was also shocked and upset. He wanted to go to the Foster home. I consulted with the Secret Service and arranged transportation. He did not raise with me any issues regarding Mr. Foster's office or any documents in it.

The President and I then left the White House to travel to the Foster home. I believe I saw Mr. Nussbaum on the first floor as we were leaving. I did not speak with him, other than perhaps to acknowledge the tragedy.

The President and I went to the Foster home in a small motorcade. When we were there, I spoke with Lisa Foster and with other members of the family. David Gergen arrived and he and I arranged with Mark Gearan, who was at the White House, to notify the public of the death.

I left the Foster home and returned to the White House after midnight. Several people gathered in the kitchen, including the President, David Gergen, Vernon Jordan, Mickey Kantor and, I believe, George Stephanopoulos. I spent about 43 minutes in the kitchen before I went home.

At some point, Mr. Gergen spoke by telephone with Mr. Gearan. I heard Mr. Gergen's side of the conversation. After discussing the press notification regarding the suicide, Mr. Gergen asked Mr. Gearan if Mr. Foster's office was secured. I understood that Mr. Gearan had answered yes. I believe Mr. Gergen then passed the phone to me and that I spoke briefly with Mr. Gearan. I do not remember whether or not Mr. Gearan repeated to me that the office was secured.

My focus that evening was the President and the Presidency, the Foster family, and notification of the press. I was not told that any law enforcement authority had asked that the office be secured.

The morning after Mr. Foster's suicide I believe I asked Mr. Burton to call Secretary Babbitt and inform him that the White House would cooperate fully with the Park Police in connection with any matters arising from Mr. Foster's death. At some point during the day I spoke briefly with Mr. Nussbaum and we confirmed that he would be responsible for all matters related to the investigation of Mr. Foster's death. These matters involved legal questions that would have to be addressed by Mr. Nussbaum and his staff. I did not learn that there were disagreements between Mr. Heymann and Mr. Nussbaum as to how the documents in Mr. Foster's office would be reviewed until much later.

On Monday, July 26, I went to Chicago with the President. That afternoon, Mr. Burton called me in my hotel room and told me that scraps of paper had been discovered by Mr. Neuwirth when he turned Mr. Foster's briefcase upside down. I then spoke with Mr. Nussbaum, who was with Mr. Burton. Mr. Nussbaum repeated to me the circumstances surrounding the discovery of the document and expressed regret that it had not been discovered sooner. He read the document to me.

I was perplexed by it. There was no salutation. There was no signature. There was no date. It did not sound to me like a suicide note. My first reaction was that I wanted to see it.

Mr. Nussbaum and I discussed notification of the Foster family. We did not want Lisa Foster, her children, and Vince's mother to hear about it first on the news. In addition, Mr. Nussbaum said he wanted to consider some legal issues.

After further discussions with Mr. Nussbaum and others, I decided that given the lateness of the hour, we should reconvene the following morning in Washington when I could see the document. Mr. Nussbaum would look at the legal issues in the interim.

By the next morning, Mr. Nussbaum had resolved the legal issues and we began the process of turning over the note to the proper authorities. There were some unexpected complications in this regard because Mrs. Foster was travelling to Washington and would not arrive until late that afternoon. As soon as we met with her and notified the President, Mr. Nussbaum arranged for the document to be delivered to the authorities.

At some point after Mr. Foster's death, and I believe after the note was discovered, I learned from Mr. Gergen that he had been called by Tom Collier, Secretary Babbitt's Chief of Staff. Mr. Gergen told me that Mr. Collier was concerned about the manner in which some matters relating to the Foster investigation were being handled by White House Counsel. This was the first time that I had received a complaint about the manner in which the White House was handling any aspect of the Foster investigation. I do not recall what particular matter was at issue but I had the impression that Mr. Collier believed that Mr. Nussbaum was viewing the matter in an overly legalistic manner.

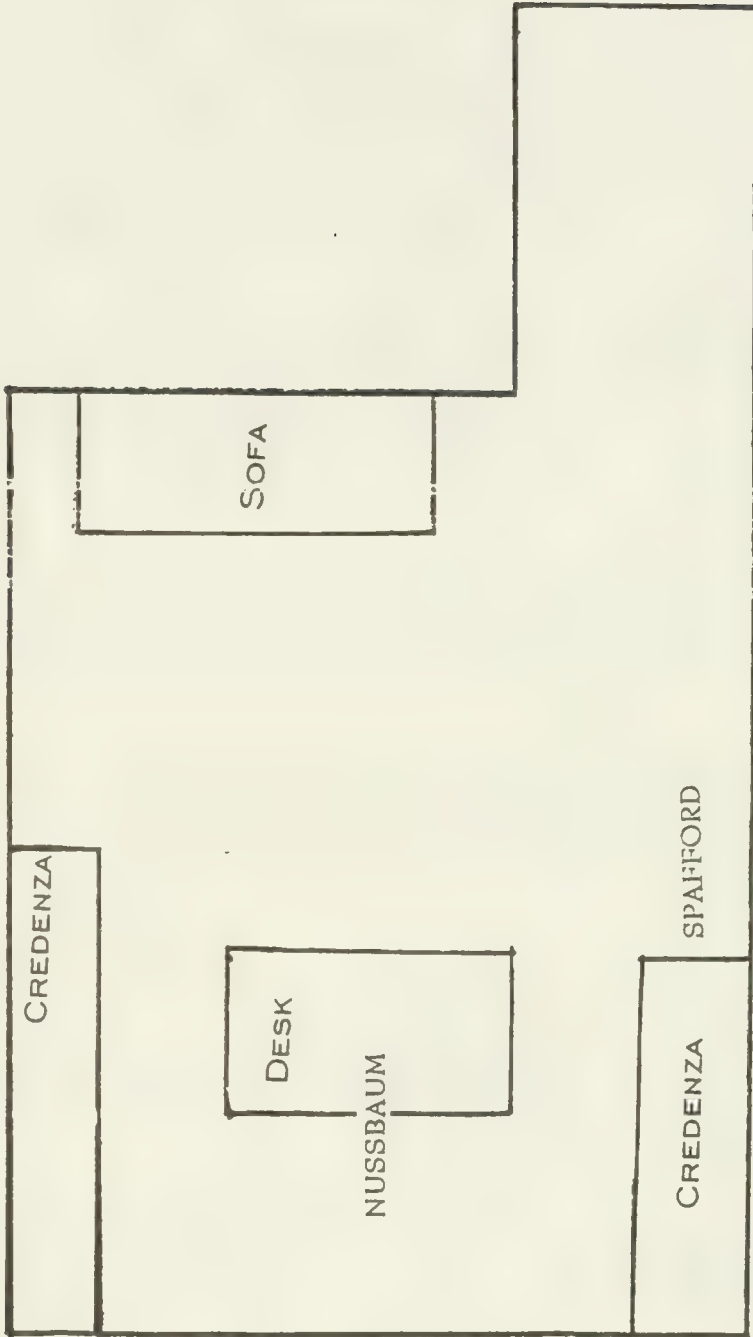
I discussed Mr. Collier's concerns with Mr. Nussbaum. I did not find it particularly unusual that lawyers would disagree about matters of this type. That had certainly been my experience when I worked in the private sector. I told Mr. Nussbaum that I respected the legal issues but thought it was important for the White House to be as cooperative as possible. Mr. Nussbaum agreed with me. It was my understanding that he was making every effort to proceed in an orderly and balanced fashion.

Shortly thereafter I heard from Mr. Gergen that he had gotten feedback from Mr. Collier that matters were proceeding in an agreeable way.

I am happy to answer any questions the Committee may have.

APPENDIX

OFFICE OF VINCENT FOSTER



CAMP Ft. McCoy

071209 193101310

Death Investigation

RESULTS OF INVESTIGATION

On 7-27-93 at approx. 2115 hours I met with Mr. Bernard Nussbaum in the Chief of Staff's Office in the West Wing of the White House. Also present were a representative from Department of Justice, Mr. Phillip Herman, as well as Asst. Chief of Staff Bill Burton, also Mr. Gerrighan and Mr. MacClarity.

Mr. Nussbaum had before him on the table small pieces of yellow lined note paper which he was assembling into a whole page. The assembled pieces revealed a note, identified to be in the handwriting of the deceased Vincent Foster. Mr. Nussbaum read the contents of the notes to the undersigned of which I took notes. He then placed the pieces back into a white legal White House envelope and handed them over to me. The notes appeared to be on 3 hole yellow lined paper of approx. 2/3 page length.

According to Mr. Nussbaum, on Monday 7-26-93 he directed one of his assistants, Mr. Steven Neuwirth to enter Mr. Foster's Office and take a detailed inventory of the files and material in there. In a brief case, known to be in the office and thought to be empty, he found the torn pieces of a hand written page. The scraps were dumped out and then taken to Mr. Nussbaum's Office where they were assembled and Mr. Nussbaum was notified. Mr. Nussbaum then went through notification procedure to Bill Burton, to the Chief of Staff, and finally to the President today 7-27-93 at about 1700 hours when he returned to Washington, D.C. and at about 1800 hours today date to the family of Mr. Foster when they returned to the city.

Also present outside the meeting, but who did speak to me about the notes was Mr. Jim Hamilton, the attorney for the Foster Family. They are very concerned about the confidential nature of the note and other news leaks attributed to the U.S. Par. Police.

According to Mr. Bill Burton 202-456-6798 Mr. Steven Neuwirth will be available for interview on 7-28-93. Also handwriting samples will be made available.

Cleared at 2200.

*Det [maybe original]
Report was retyped
Captawhine*

7A

8 WARRANTS <input type="checkbox"/> YES <input type="checkbox"/> NO		9 LATENTS <input type="checkbox"/> LATENTS <input type="checkbox"/> PHOTOS		10 TECH NOTIFIED		11 INVESTIGATOR NOTIFIED		12 PAGE 1 OF 1	
13 STATUS: <input type="checkbox"/> OPEN <input type="checkbox"/> SUSPENDED		CLOSED BY: <i>Sumner</i>		<input type="checkbox"/> EXCEPTION		<input type="checkbox"/> UNFUNDING			
14 REPORTING OFFICER		15 INVESTIGATOR		16 SUPERVISOR		17 DATE		18	
		<i>Det. J. Reedy</i>				7-27-93		419	

2 000459

2
Foster, Vince
already have file
made up -
yellow)

Phil Heyman

Recommendation: to return in hands of

investigator -
Park Police.

they will not to look at the
circumstances and finding of
note -
when they will release -
leave it to them.

Send question relating to the

Chances are they will release it
if some part -
it they find there is

- Circumstances under which
it was found -
- one last guess -

Don't take that risk if
I was you -

Some coming up from me
people - too much of current if
inspiring from hoping to end war
disciplined by people in war
isolated during -1 since

Leh Stone to associate
Wilson Jones

Jim Hamilton
Bernie Musson
Bill Burton
David Gergen
Mack McCarty

Precedent →

○
Zpts → for happier if disc.
if someone other than Perrie →
if worried about what's office +
→ decision w/no.

2 000514

We have direct & press activity
 of Mr. Fitch reflects his dependent status.
 In deference to him, no further comment.

press

AG says - confidential investigation
 not in habit..

W

2 000515

To MAGGIE

Date 7/22/75 Time 5:05

WHILE YOU WERE OUT

M. BILL BURTON

of _____

Phone x 6797

Area Code	Number	Extension
TELEPHONED		PLEASE CALL <input checked="" type="checkbox"/>
CALLED TO SEE YOU		WILL CALL AGAIN <input type="checkbox"/>
WANTS TO SEE YOU		URGENT <input type="checkbox"/>
RETURNED YOUR CALL <input type="checkbox"/>		

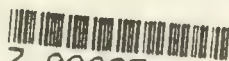
Message _____

Operator KIC

 **AMPAD**
EFFICIENCY®

22-023 CARBONLESS

REDACTED


Z 000951

— being credible problem —
— as full release as possible —
in Hunt →

HRC → n
WH nt



Z 001148

Full Doherty

1) Nov 30 home

4pm - 7pm } 27 hrs.

disc - 4pm Nov (NOT mid day)

2) McLeary ordered office sealed (?)

3) 'a few pieces' of loose paper -
 2 single sheets " " - for ink
 bits.

4) asked if del - has on Sun.



**U. S. Senate Special Committee
to Investigate Whitewater and Related Matters**

RE: 5/26/95 Request for Documents

**Handwritten Notes of
Stephen Neuwirth**

Retrieved from
WF 175-WF-187743 Sub C

Excised Copy

COPY _____

FD-340 (Rev. 3-13-57)

Universal File Case Number

175B-WF-187743¹²⁻⁴
~~7C-WF-167702~~

Field Office Acquiring Evidence

Serial # of Originating Document

Date Received

From

(Name of Contributor)

(Address of Contributor)

(City and State)

By

Salter

(Name of Special Agent)

To Be Returned ☐ Yes ☒ NoReceipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)

Federal Rules of Criminal Procedure

☐ Yes ☒ No

Title:

Reference:

(Communication Enclosing Material)

Description: ☐ Original notes re interview of

Stephen Newirth

Room 130 060B

Stephen R.
Steven Neuwirth,

Assoc Counsel to the President,
6-20-62, 456-7903/7900.

Release - 3 me as me 2 me

Sunday 7-22 formalities met with
Emily (lawyer). SN did not reach office of VF
Friday went to CR to lunch.

Monday 7-26 - Asked by BN to inventory of
files in VF office - Found out the subject
matter of files also put away remaining items in
a box (Lefty Box) was to put photos & notes
in box, was alone except when VF ^(Deborah Gorton) ~~Deborah Gorton~~ was
in room.

Told to Start Inventory by BN on Thursday 7-22
or while in Arkansas.

Started the inventory 10:00 or 10:30

Key held by BN & Deborah Gorton - at start
of inventory may have asked ~~BN~~ DG for key or
maybe she had copied it.

Note found at 4:00 PM.

was pretty pictures any

Lunch - midday - didn't remember if door
locked.

A 000139

Pictures ~~any~~ in the box. was getting bracelets in box with pictures. Plain Case in box saw small yellow scraps of paper fell out, felt in bag found other scraps of paper. found at 4:00 to 4:15, Took to BN office, put scraps, was piecing note together in BN office when BN came back. Pieced note together, thought the whole note was there, may have been a small part missing & is not. No signing or date on it.

BN ~~was~~ ^{was} Chief of Staff, BN came back, Bill Burton came up - then discussion re finding note (BN, BB, SN) thought they should tell Chief of Staff Mackin (in Chicago) Mackin talked with BN BB SN via speaker phone

Note typed by BN, SN maybe BB. (about 4:30)

During conversation Mackin said that it was important to notify FBI & press before anything was done with note. Was a question whether note was suicide note. Was talk of turning over to law enforcement. SN thought that if it was not a suicide note, it was very close. Not stated that it should not be turned over.

Discussion of notifying Pres & family & whether it was a suicide note.

Note taken by BN put in Desk or safe
Determined that they could discuss on Tuesday AM

A 000140

Told BN that the note is within the
... guidelines of what L. Enfront people want.

BN asked SN to do legal research to determine
any legal problems associated with turning it over.

No one was notified on Monday night. ---

SR staff meeting then saw BN at 9:00 am
Weddy Am SN saw BN. Asked BN for
the time table re turning over to L. Enfront.
BN said he was about to go into a meeting
re note, SN not at meeting, was told mtg
was to include MacLachy, ^{David} Gergen, Burton.

--- Mrs Foster met w/ BN in BN office at
approx - late afternoon 3:00-4:00. SN not
at mtg.

Told that ^{Phil} Deputy AG + AG + USPP came to
meeting - USPP took notes

No one reached the conclusion that it did
not have to be turned over. ..

Burton question whether updated internal note
was a sub note.

USPP looks not an issue.

nothing different

also in bag pen, electric, black point note

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

TUESDAY, AUGUST 8, 1995

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.**

The Committee met at 9:50 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order. I would ask our witnesses if they would stand for the purposes of taking the oath.

Do you swear or affirm that the testimony you are about to give is the truth, the whole truth and nothing but the truth, so help you God?

Ms. THOMASES. I do.

Mr. LINDSEY. I do.

The CHAIRMAN. Please be seated. I think both of you have counsel, and most have taken the opportunity of having their counsel sit next to them, and if you want—no?

Mr. LINDSEY. I'm fine.

Ms. THOMASES. I'm fine.

The CHAIRMAN. I just wanted to advise you that if you do, that's fine. Before we start, Senator Bond, you would like to make an announcement?

OPENING COMMENTS OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you very much, Mr. Chairman.

Last week we asked about the hard drive records which would show during the period of July 1993, particularly July 19, 20, 21 and 22, what happened to the indices that Ms. Gorham kept on her computer. We have a letter dated August 6 from Ms. Jane Sherburne, who I understand is here with us today. Ms. Sherburne outlines those people who would have information about the preparation and the maintenance of the indices.

What I requested and what I would ask our counsel to consider with White House Counsel is can we find out from the hard drive, can we get a computer expert who can pull off for us the informa-

tion as to what was on the hard drive on July 19, what happened to the index or indices on the 20th, the 21st and the 22nd? There were two indices printed off on July 22, or at least there was the heading on the hard copy we received indicating it was July 22. Ms. Gorham testified that what appears to be the second one of the indices was not kept in the same form that she kept it.

I wonder if counsel could work with the White House and with whatever computer people are necessary to help them determine when and how the indices were changed and, if there's any indication by log-on or other identifiers, who made the changes and what changes were made.

The CHAIRMAN. Senator Bond has raised this with me. We raised it last week that both counsel, Mr. Ben-Veniste and Mr. Chertoff, meet with the White House representative because the Committee has a right to have this question resolved. So I will ask our counsel again, at the first break if you would meet with the White House representative to work this out.

We've worked out a number of things. We have agreed that we don't have to bring in the interns. We have resolved the issue of people who aren't available. Hopefully, we can continue to work in a cooperative way. But Senator Bond is correct that his inquiry has not been satisfactorily answered, and I think it's important that we get that information.

There is one other item before we proceed. A number of my colleagues—myself included—are concerned about what would appear to be a number of inconsistencies between testimony from a number of witnesses, at least six witnesses, and Maggie Williams. I had just raised this concern to Senator Sarbanes. It has been our intent not to bring witnesses back; I would like to avoid that if possible.

However, we need to find a manner in which to review these areas and to resolve, if we can, sharp conflicts in some cases. We understand that some will never be resolved. There appear to be a number of contradictions and questions that certainly need to be answered.

Now, I don't know if we can do this in a deposition. I understand that she's now in China. Otherwise, it was my intent to bring her back Thursday. But if she is—is she out of town, do we know, I'm asking the White House representative—do we know if she's in China? Again, I'm going to ask counsel to address this, and I'm going to review the record this evening as it relates to this question.

Obviously, if she's out of the country, we're not going to make that request, but this is something that I believe has to be dealt with to resolve as many of these possible conflicts as we can or, at least as Mr. Ben-Veniste and I have discussed some clarifications. So that is an open question.

Senator SARBANES. Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. In light of that statement, I think there's a necessity, then, to renew our approach to the Independent Counsel. We've done this on more than one occasion, and we've consistently—and unfortunately, in my opinion—been rebuffed by the

Independent Counsel. I say this with increasing concern because we had a session with the Independent Counsel in which we agreed to stage the hearings, and now I'm watching these hearings unfold in the House, and my understanding from our session with the Independent Counsel was that was matters that we were not to get into.

The CHAIRMAN. That's one of the reasons we withheld. The Senator is right.

Senator SARBANES. At this point in time, I mean, I look at that and say whatever happened to that conversation that we had with the Independent Counsel as to how to proceed.

Now, on the very point you've raised, we have asked, I think, an extremely reasonable and legitimate request of the Independent Counsel for the FBI interviews with Officer O'Neill and with Maggie Williams, and for the lie detector test report from the Independent Counsel. I must say to you, I do not understand their unwillingness to cooperate with this Committee. It seems to me that we should—particularly in light of this statement you've just made—go back to the Independent Counsel. Again, we have—

The CHAIRMAN. I share this concern. Let me suggest, why don't we ask both counsel, again—at the second break, because they have enough work to do on the first break—if they can schedule a meeting face to face with the Independent Counsel as we have in the past. This way we'll raise these questions with him directly.

Senator SARBANES. Fine.

The CHAIRMAN. So we ask our counsel, when you get an opportunity, to see if some afternoon the Counsel won't come over. The sooner, the better.

Ms. Thomases, do you have a statement that you would like to read? We would be happy to receive it.

SWORN TESTIMONY OF SUSAN P. THOMASES ATTORNEY AT LAW

Ms. THOMASES. Yes, Mr. Chairman.

Mr. Chairman and Members of the Special Committee, when I was first asked to appear at today's hearing, I did not plan to make an opening statement, but as I considered the events surrounding Vincent Foster's tragic death and the questions Committee counsel have pursued, I have come to believe that it might be helpful to the Special Committee if I try to place my actions during those days in context.

As I'm sure is the case with many of you, community service has always been an important part of my life. You have chosen to serve our country in public office, but ever since I finished college more than 30 years ago, I have chosen to do what I can as I remain in private life.

As Senators, you all know that during campaigns one meets, works with, and develops deep friendships with many people. I believe these relationships are special because they are formed at an extraordinary time in which people bond together as they work toward a common goal. Of course, a few of those friendships become deeper and longer lasting than others. These friends are the ones with whom I have shared all the ups and downs of politics, the stresses of professional careers, the joys and sadnesses of life, and

the personal growing up that we all have to work through. I am proud to place the President and Hillary Clinton among those special friends.

I have been a friend of the President for 25 years, and I have known Mrs. Clinton for almost 20 years. We have stayed at each other's homes, shared family joys and sorrows, and have grown to see each other as the friends we often turn to on a personal level.

In the summer of 1992, then-candidate Bill Clinton asked me to move to Little Rock and become Director of Scheduling and Advance for the Clinton/Gore Campaign. I was there for 6 months. My husband Bill was generous and supportive enough to relocate there with our 2½-year-old son, Tommy. In fact, Tommy became one of the rugrats of the campaign headquarters. Even before the inauguration in January 1993, I had decided not to go in Government. I knew only too well the sacrifices that families of those in Government must often make. I did not want that for my family. Tommy was just 3 years old, and I wanted to be with him as he grew up.

However, during the early months of the Administration, I tried to continue to be available for support, personal cheerleading, and advice on scheduling and similar matters. I also continued to make myself available to provide references and career counseling to the many young people who had worked with me during the campaign.

As part of those efforts, I spoke regularly to my friends in the White House: Maggie Williams, with whom I had worked since the early 1980's on a variety of public interest projects, including the Children's Defense Fund; Bernie Nussbaum, a brilliant lawyer with whom I have shared common interests in both New York and Washington; and Vince Foster, who at the time of his death I had known almost as long as I have known Hillary Clinton. Vince, a gracious, meticulous, reserved lawyer with a deep respect for the law and abiding love for his family and his friends. I also spoke frequently with Mrs. Clinton, and less often with the President.

As Maggie Williams stated when she appeared before you, it is often my habit to make phone calls to these and other friends at all times of the day and night. I call more often to lend an ear than to give advice; to encourage, share ideas and simply hear how things are going. Until Maggie said it, I didn't know I was known as the midnight caller, but I sure won't argue with that title. Again, these are my friends, and they have been involved in an Administration that means a great deal to all of us.

In addition, for more than a decade, it has been my practice to come to Washington on Wednesdays for business, and sometimes I stay over. Since the Clinton Administration took office in 1993, I often visit my friends who are working in the Government on Wednesdays, and if they are available and if I have time, I try to see them. This was the context in which I called and visited the White House on July 21st and 22nd of 1993. This was something that I did all the time.

The terrible difference on those days was that we had just had a death in what amounted to our family. From the Clintons on down there was grief, a feeling of helplessness, and a question as to whether any of us could have helped Vince. There is always great sadness when a friend dies, but the shocking circumstances of Vince's death compounded it so many fold.

Like members of a family, we reached out to each other, and everyone asked everyone else to check on how people were holding up, how they were doing. I recall doing that with Mrs. Clinton, the President, Maggie, Bernie and others during those terribly difficult days. By doing so, I also helped fill my own need to grieve Vince's death.

Now I understand this Committee is examining how the search or review of Vince's office was carried out and how the files in that office were handled. Committee counsel have asked me and questioned me at length about my recollection of my actions with respect to those issues from July 20th through the 22nd, 1993. I have tried my best to remember whatever I can about any phone calls and visits during that period. I will do so again today.

While my memory is not perfect—I just don't remember every person that I spoke to during those days—I do know that I never, I say never, received from anyone or gave to anyone any instructions about how the review of Vince Foster's office was to be conducted or how files in Vince Foster's office were to be handled. I want to repeat that. I never received from anyone or gave to anyone any instructions about how the review of Vince Foster's office was to be conducted or how the files in Vince's office were to be handled.

Thank you for giving me your time and attention. I am ready to answer your questions.

The CHAIRMAN. Thank you, Ms. Thomases.

Mr. Lindsey.

**SWORN TESTIMONY OF BRUCE R. LINDSEY
DEPUTY COUNSEL TO THE PRESIDENT
FORMER ASSISTANT TO THE PRESIDENT, SENIOR
ADVISOR AND DIRECTOR OF PRESIDENTIAL PERSONNEL**

Mr. LINDSEY. Yes, Mr. Chairman, Members of the Committee. My name is Bruce Lindsey. I am Assistant to the President and have served as Deputy White House Counsel since September 1994. In July 1993 I was Assistant to the President, Senior Advisor and Director of Presidential Personnel.

I was a personal friend of Vince Foster's. His death was a shock and a blow to me and to many others both inside and outside the White House who held him in high regard. The days following his death were difficult for all of us as we struggled to understand Vince's suicide. I spent much of my time consoling others and being consoled. I regret now that Vince's widow, Lisa, and her children are being forced to relive that painful week.

As I testified at my deposition taken before this Committee last month, I have absolutely no knowledge of any documents being removed from Vince Foster's office following his death and can offer no insight into that issue or into any of the other issues I understand the Committee is investigating. With the exception of one meeting with the White House Counsel and several others on July 22, 1993 to discuss what legal privileges applied to those documents, I neither engaged in nor was aware of discussions regarding the handling of documents in Vince's office. Nevertheless, I will be happy to answer any questions the Committee may have. Thank you.

The CHAIRMAN. Thank you very much.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Ms. THOMASES, you are a practicing lawyer?

Ms. THOMASES. Yes, I am.

Mr. CHERTOFF. Where do you practice?

Ms. THOMASES. I practice in New York.

Mr. CHERTOFF. What firm?

Ms. THOMASES. Willkie Farr & Gallagher.

Mr. CHERTOFF. I guess that makes you a New York lawyer; right?

Ms. THOMASES. That makes me a New York lawyer.

Mr. CHERTOFF. Can you give us a sense of the size of the firm? Can you tell us how many lawyers are in the firm?

Ms. THOMASES. The firm has approximately 360 lawyers.

Mr. CHERTOFF. Now, you also have a Washington office?

Ms. THOMASES. Yes, we do.

Mr. CHERTOFF. You practice out of that as well?

Ms. THOMASES. I regularly come down here, usually once a week.

Mr. CHERTOFF. Mrs. Clinton is a lawyer as well, I take it?

Ms. THOMASES. Yes.

Mr. CHERTOFF. During the course of your friendship with her, have you ever, when she was in private practice, worked on cases with her or handled matters with her firm?

Ms. THOMASES. I have never worked on cases with her. At one point when she was trying to figure out how to separate her time from the time of the rest of the lawyers in her firm as a matter of protecting her relationship with her husband from the earnings of the firm, I consulted with them on that matter.

Mr. CHERTOFF. When you say "consulted with them," do you mean consulted with the Rose Law Firm?

Ms. THOMASES. I talked to some members of the Rose Law Firm about how the accounting records could be structured to segregate the moneys that were earned from government business in their firm from the rest of their revenues.

Mr. CHERTOFF. Now, you indicated in your opening statement that you had an ongoing function or advisory role at the White House after the inauguration in which you would call up to give advice on career counseling or scheduling matters.

Ms. THOMASES. Yes.

Mr. CHERTOFF. Does that still continue?

Ms. THOMASES. On occasion, yes.

Mr. CHERTOFF. At any time did you either voluntarily place yourself under any restriction or did somebody place you under any restriction in terms of your ability to lobby the White House?

Ms. THOMASES. I was placed under restriction at the time of the transition. All of us who were in the transition signed a transition document.

Mr. CHERTOFF. How long did that restriction apply?

Ms. THOMASES. It supposedly extended 6 months after the end of the transition, but I extended it for the whole year of 1993, personally.

Mr. CHERTOFF. So in 1993 you did no lobbying at the White House?

Ms. THOMASES. That's correct.

Mr. CHERTOFF. But that restriction is no longer in effect?

Ms. THOMASES. That is correct.

Mr. CHERTOFF. Let me ask you, Ms. Thomases, during the campaign in 1992 you had a function regarding the issue of Whitewater Development Corporation & Associates; right?

Ms. THOMASES. Yes, for a brief period of time.

Mr. CHERTOFF. Who asked you to assume that role?

Ms. THOMASES. I think I was initially asked to do that by the then-Campaign Manager David Wilhelm.

Mr. CHERTOFF. What was the assignment that you were asked to undertake?

Ms. THOMASES. After discussing it with David and then with the Clintons, I was asked to help them, help them organize some of the documents about Whitewater for the purposes of responding to a press inquiry from The New York Times.

Mr. CHERTOFF. Now, that press inquiry was by a reporter named Jeff Gerth?

Ms. THOMASES. Yes, it was.

Mr. CHERTOFF. It resulted in a series of articles in The Times in March 1992?

Ms. THOMASES. Only one article that I immediately recollect.

Mr. CHERTOFF. Did you ultimately talk to the press about that?

Ms. THOMASES. I ultimately talked to Jeff Gerth about that.

Mr. CHERTOFF. You did that after reviewing some documents?

Ms. THOMASES. I reviewed the documents that I was able to gather in the period of time that Jeff Gerth had set as his deadline.

Mr. CHERTOFF. Where did you gather the documents from?

Ms. THOMASES. Mostly in Little Rock, and many of them had been gathered by other people working with the campaign.

Mr. CHERTOFF. Like who?

Ms. THOMASES. Like a woman named Loretta Lynch, who was the associate-type person who took on the responsibility of organizing the available documents.

Mr. CHERTOFF. Did you work with anybody else besides that on this Whitewater issue during the campaign?

Ms. THOMASES. I worked with Jim Lyons, who took over the responsibility for the documents shortly after The New York Times article.

Mr. CHERTOFF. Did you work with Mr. Lindsey?

Ms. THOMASES. No, I did not work with Mr. Lindsey. I don't know of any role that Mr. Lindsey had in that process.

Mr. CHERTOFF. Did you work with the First Lady?

Ms. THOMASES. Yes, I did work with the First Lady.

Mr. CHERTOFF. Did you work with then-Governor Clinton?

Ms. THOMASES. Yes, I did work a little bit with then-Governor Clinton.

Mr. CHERTOFF. Mr. Lindsey, do you have a recollection of working or dealing with the Whitewater issue in the campaign?

Mr. LINDSEY. No. On the campaign I was on the airplane traveling with the now-President, then-Governor of Arkansas. I was not at the headquarters.

Mr. CHERTOFF. You had nothing to do with Whitewater during the campaign?

Mr. LINDSEY. I would speak to the press when they would ask a question on the road, but I had nothing to do with the gathering of the documents.

Mr. CHERTOFF. When you had to speak to the press, what was your basis of information in giving responses?

Mr. LINDSEY. Usually, I would ask the President.

Mr. CHERTOFF. You would get it directly from the President?

Mr. LINDSEY. Usually, or I might speak to someone in the Press Office in Little Rock.

Mr. CHERTOFF. Anybody in particular?

Mr. LINDSEY. Not that I recall. I may have spoken to Dee Dee Myers, who was our Press Secretary at that time on the road with us. Usually during this time, if there was a press inquiry, the President, then-Governor would respond to it directly.

Mr. CHERTOFF. When did you first become aware that Mr. Foster had had any function in terms of gathering documents or handling documents or anything to do with Whitewater?

Mr. LINDSEY. Oh, I don't know if I know that he had any role in the gathering of documents. I believe I became aware sometime after his death that there had been a file in his office on Whitewater when there was a press inquiry about it in November or December 1993, I guess.

Mr. CHERTOFF. I want——

Mr. LINDSEY. I think that may have been the first I was aware of it.

Mr. CHERTOFF. I want you to think very carefully to the period of the transition and tell us whether you recall knowing at the period of the transition that Mr. Foster had some involvement with Whitewater.

Mr. LINDSEY. Yeah, I know now that he had some involvement in the preparation of the documents transferring the Clintons' interest to the McDougals. I don't recall that I had that knowledge then.

Mr. CHERTOFF. You did not have that knowledge during the transition?

Mr. LINDSEY. I don't believe so.

Mr. CHERTOFF. Are you confident of that?

Mr. LINDSEY. As confident as I can be. I don't recall knowing that at that time.

Mr. CHERTOFF. Did you have a conference call with Mr. Lyons, Mr. Foster, Mr. Tisdale and Mr. Hubbell in which the subject of Whitewater came up during the transition?

Mr. LINDSEY. Not that I recall.

Mr. CHERTOFF. May I put DKS 482 up on the Elmo? This is one of the notes that was in Vince Foster's handwriting in his office.

Ms. THOMASES. Excuse me. While you question Mr. Lindsey, may I take a break, please?

Mr. CHERTOFF. Sure. Mr. Chairman?

The CHAIRMAN. Absolutely.

Mr. CHERTOFF. I'm going to get back to Ms. Thomases in a moment, but let me do this then, maybe, we can take a break ourselves. Mr. Lindsey, I want you to look at DKS 482. That is Mr. Foster's handwriting; correct?

Mr. LINDSEY. Correct.

Mr. CHERTOFF. I can tell you this was a document that was in one of the files that was removed from his office on July——

Mr. LINDSEY. I say correct; I'm not sure I could identify his handwriting, but I will accept your word for it that this is his handwriting.

Mr. CHERTOFF. If you don't recognize it, just tell us you don't recognize it.

Mr. LINDSEY. I don't know that I could say this is his handwriting.

Mr. CHERTOFF. I can tell you it came out of his office on July 22 and we have reclaimed it now from Mr. Kendall very recently. It says "Tuesday 11/24" at the top and it says "Lyons, Lindsey, Tisdale, Hubbell." Who is Tisdale?

Mr. LINDSEY. John Tisdale was an attorney at Wright, Lindsey & Jennings in Little Rock.

Mr. CHERTOFF. Is he a former partner of yours?

Mr. LINDSEY. Yes, he is.

Mr. CHERTOFF. Down under 4 it says "Personal Finances, Whitewater. Les Patton did original work." Who is Les Patton?

Mr. LINDSEY. Les Patton is a member of the firm of Patton, McCarthy who did the reconstruction that we did during the campaign which became what is referred to as the Lyons report.

Mr. CHERTOFF. Does this recording, this memorandum or this note now refresh your recollection that, in fact, in November 1992 Mr. Foster, Mr. Lyons, you, Mr. Tisdale and Mr. Hubbell talked about and discussed Whitewater as one of the issues that had to be addressed?

Mr. LINDSEY. No.

Mr. CHERTOFF. It doesn't refresh your memory?

Mr. LINDSEY. No.

Mr. CHERTOFF. Are you in a position to tell us this didn't happen? This conversation didn't occur?

Mr. LINDSEY. The conversation could have occurred. I cannot relate what's at the top of the sheet to what's at the bottom of the sheet, that they were in the same conversation.

Mr. CHERTOFF. We're handicapped here because we've accepted the redactions that the portion of the page omitted is relating to other matters.

Mr. BEN-VENISTE. We can do better than that, Mr. Chertoff. We've reviewed those matters, and we can say they do not relate to Whitewater.

Mr. CHERTOFF. Let me finish, Mr. Ben-Veniste. If I can get it out, I will. On the other hand——

OPENING COMMENTS OF SENATOR JOHN F. KERRY

Senator KERRY. Mr. Chairman.

The CHAIRMAN. Yes.

Senator KERRY. I don't think that should just be jumped over so easily.

The CHAIRMAN. Senator Kerry, if I may, let us——

Senator KERRY. Mr. Chairman, do I not have a right to make a statement?

The CHAIRMAN. If I might, let me ask that Mr. Chertoff be permitted to complete his question. If we find that it is not fair, I

think you will find that the Senator will attempt, and I look toward all of your counsel to keep it within the boundary of fairness. So let's start it, let's listen and take it from there.

Mr. Chertoff.

Senator KERRY. Mr. Chairman, again, I want to complete my statement.

The CHAIRMAN. Yes, go ahead.

Senator KERRY. The question on its face is unfair because the question was posed in a way that suggested that the redaction is somehow a mystery.

The CHAIRMAN. We're going to——

Senator KERRY. Mr. Chertoff knows he has already reviewed that and he knows what's in there.

The CHAIRMAN. Senator, we're going to give Mr. Chertoff an opportunity to finish the question and to set the record straight. We're not attempting to create an illusion. That's not something that this hearing has been about nor will it be about. So let's give him an opportunity, and you have fine counsel to see to it that we stick to the issues, and we're going to do that.

There is no attempt to suggest that the redacted materials are relevant because we have worked out a system whereby counsel have reviewed these materials—I think everybody here knows that, and maybe others don't—and where the redactions are continued it is because counsel mutually have agreed that they're not relevant. So let us continue now.

Senator KERRY. May I ask a second question, Mr. Chairman?

The CHAIRMAN. Certainly.

Senator KERRY. The second question is it's my understanding that the scope of today's hearing is with respect to the handling of the documents in Vince Foster's office. These questions are way outside of that issue.

The CHAIRMAN. I don't believe so. I think that they are relevant. The contents of the documents themselves are obviously relevant to the handling of the documents. This is not a court of law. We're attempting to get the facts. So I'm not going to confine either counsel or the Senators to that extent. It then becomes unreasonable.

OPENING COMMENTS OF SENATOR BARBARA BOXER

Senator BOXER. Mr. Chairman, I have a question unrelated to this. It's pending, but it's just a matter of procedure. I have noted on several occasions where you, Mr. Chairman, have interrupted our counsel, and none of us stopped you at that point. You were making your point and we respected it. Now, when someone attempts to interrupt your counsel because we were troubled by it we are told don't interrupt the counsel. So I think either we have a rule that we——

The CHAIRMAN. I don't think I said that. I said that I thought counsel should be permitted to finish and conclude his question. By the same token, I would certainly look to protect the witnesses so that they are treated fairly.

Senator BOXER. I appreciate that, but I'm just suggesting to you——

The CHAIRMAN. I'll do that. I think I have attempted, and I have allowed great leeway, and I will continue to do that for both sides. I don't think that Mr. Ben-Veniste has any quarrels with this. I hope not. I will continue to provide latitude. However, the Chair has to exercise some degree of control in recognizing that the Senators rights have to be protected. I am attempting to maintain some form of decorum so that we can do the job.

Senator BOXER. Mr. Chairman, it's fine. I'm just making a point here that I share your view that counsel should be able to question, et cetera, but, on the other hand, it should work both ways. I'm just making that point.

The CHAIRMAN. I believe it has.

Senator BOXER. I'll show you where it hasn't, but that's OK.

The CHAIRMAN. I'd be very interested in that. If you think that I have been too unfair, I'll try to do a better job if you can point to a better way.

Let's return again, Mr. Chertoff. Why don't we start as it relates to this whole document.

Mr. CHERTOFF. To get back to what I was trying to get at—and obviously I was unsuccessful in making myself clear—the portions that are redacted are not related to Whitewater, they're related to other transactions that were being dealt with during this period. I'm not meaning to imply that Mr. Ben-Veniste and I didn't see them because we did see them. My point is that this—if you were to look at the entire document without the redaction, you would see it as a numerical list of items covered under this heading, Tuesday 11/24, with the list of individuals who appear to be participating in a meeting.

Now, my question to you is this, Mr. Lindsey: Does this refresh your memory that on November 24, 1992, among other things, you discussed with Mr. Lyons, Mr. Tisdale, Mr. Hubbell and Mr. Foster winding up the Clintons' investment in Whitewater?

Mr. LINDSEY. No, sir, it does not. If I were to speculate, I do not—

Mr. CHERTOFF. Don't speculate.

Mr. LINDSEY. If you look at the reference over on the side to John Ragovan and Cheryl Mills, my guess is that that was a conversation discussing the ethics pledge that the Clinton Administration made all of their employees sign and that we were having a discussion about that pledge. Again, I do not remember the conversation, but the people who are listed, Webb Hubbell, John Tisdale and others were involved in that as well, and that seems more reasonable to me than that it was a discussion of Whitewater.

Mr. CHERTOFF. Mr. Lyons was involved in that as well?

Mr. LINDSEY. Yes, he was. He was one of the counsels for the transition.

Mr. CHERTOFF. You know, in fact, though, Mr. Lindsey, that Mr. Foster was, in fact, working on issues involving the Clintons' tax returns and disclosure statements while he was in the White House; right?

Mr. LINDSEY. I know that now.

Mr. CHERTOFF. Isn't it a fact that at a point in time Mr. Foster asked for a copy of what is called the longer Lyons report?

Mr. LINDSEY. I know that now.

Mr. CHERTOFF. When did that get furnished to him?

Mr. LINDSEY. You would have to ask Mr. Lyons. Mr. Lyons at some point after Vince's death indicated to me that he had provided a copy of the longer Lyons report to Vince.

Mr. CHERTOFF. But is it your testimony that you had no inkling at the time that Mr. Foster was working on the President's disclosure forms and tax returns?

Mr. LINDSEY. No, I don't think that was my testimony.

Mr. CHERTOFF. Tell us what it is.

Mr. LINDSEY. I do not believe I knew that he had asked for a copy of the Lyons report or the longer Lyons report. I'm not sure I had a specific memory that he was working on the tax returns or the financial disclosure, but if there was someone in the Counsel's Office working on it, I would have assumed Vince would have been one of them, yes.

Mr. CHERTOFF. So you at least had a general understanding that the issue of the disclosure forms were being worked on in the Counsel's Office?

Mr. LINDSEY. Again, I don't know if I was more concerned about my own financial disclosure forms and filling them out than I was about theirs, so I'm not sure I ever focused on it or thought about it.

Mr. CHERTOFF. You, in fact, at times, were involved in their disclosure forms; right?

Mr. LINDSEY. No, I don't believe so. I was involved at one time during the campaign when we amended one of the disclosure forms.

Mr. CHERTOFF. When was that?

Mr. LINDSEY. Sometime in early 1992, either the First Lady or the President realized that they had not listed several loans that they had received personally, that they were personally liable for during the 1990 campaign, and we amended the form to reflect those loans.

Mr. CHERTOFF. Wasn't one of those loans the Whitewater loan?

Mr. LINDSEY. No, they were not. They were two loans from the Perry County Bank related to the 1990 election.

Mr. CHERTOFF. Mr. Lindsey, did you file an amendment to candidate Clinton's Presidential Candidate Financial Disclosure Statement on April 6, 1992——

Mr. LINDSEY. At some point——

Mr. CHERTOFF. Let me finish, Mr. Lindsey—which you personally signed the transmittal letter for and which listed a personal guarantee of Governor and Mrs. Clinton of Whitewater Development Company's mortgage loan?

Mr. LINDSEY. Again, I don't remember whether it was on the original form or the amended form. What I remember the purpose of amending the form to be was to list the two loans from the Perry County Bank in 1990.

Mr. CHERTOFF. Didn't you do that, that listing of the Perry County Bank loans, in January 1992?

Mr. LINDSEY. Again, whether it was January or April, I have no memory.

Mr. CHERTOFF. I'd be happy to give it to you. I ask first that we put up——

The CHAIRMAN. I'm going to ask to give copies of the documents, please, to the witnesses.

Mr. CHERTOFF. I think we have copies.

Senator SARBANES. Mr. Chairman.

The CHAIRMAN. Yes, Senator Sarbanes.

Senator SARBANES. We've been quite forbearing here this morning, but I do want to raise this point. This set of hearings was to focus on the handling of documents in Foster's office. In fact, I note that counsel, in all of the depositions with the various people who were deposed, have stated to them in section 1.B.1 of Senate Resolution 120 there is an "authorization for an investigation into whether improper conduct occurred regarding the way in which White House officials handled documents in the office of White House Deputy Counsel Vincent Foster following his death. Do you understand that this particular provision will be the focus of your deposition today?"

That was set out to each person who was deposed as the ground rules of their deposition, and that, of course, is consistent, certainly, with my understanding, that that was the ground rules for this set of hearings.

Now, the scope of the Committee's inquiry, of course, is defined by our resolution from the Senate. We've had some objections raised here because, on occasion, I think Members have gone outside of the resolution itself. In other instances I think questions have been raised that are within the resolution, but not within this set of hearings, as I understand it. Of course, that becomes relevant because, first of all, as I indicated earlier, there are conversations with the Independent Counsel.

I realize there may be some impetus here, given the fact that on the House side they seem not to be observing these restraints that the Independent Counsel wanted observed, which we've tried to do—that's one of the reasons I agree with you we need to have a discussion with the Independent Counsel about this—but I think at this point, given what the focus of these hearings were to be, the nature of the preparation and the very statements made to the witnesses, we ought to try to keep our focus there.

I have to say, Mr. Chertoff, I think that the questions have moved further and further away from that.

The CHAIRMAN. Senator, I understand your concern, but the fact is that some of the documents that Mr. Chertoff refers to are either public records and/or were documents that were at one time in Mr. Foster's office. We are attempting to get all of the facts so that we can fill out a picture as to what did or did not take place. That is our job. It is not to be accusatory. It is not to allege things that may be sensational, but rather to explore, to get the facts and to do it in a way that will be fair. I intend to follow a procedure that will do that.

There is also fairness to the Committee and its work, and to the American people. I do not believe that we are so circumscribed that we cannot—and I don't mean there has not been permitted, without objection, some leeway in these proceedings to try to get the facts about what took place.

I have often said that sometimes it may appear that you have a person who is somewhere or doing something that under ordinary

circumstances, might raise questions about, but if you give that person the opportunity to explain, they can put to rest suspicion and doubt. That's what we're going to do here. I will permit counsel to pursue this line because I do not believe it is beyond the scope, and I think there are logical connections. We're going to proceed.

Now, we're not going to get into matters as it relates to whether or not various things took place with loans or at Madison Guaranty or——

Senator SARBANES. I'm ready to get into those when the right time comes, but as I understand it——

The CHAIRMAN. No, no, I'm not suggesting Senator——

Senator SARBANES. We set out what these hearings were to be about, and I think we should stay on focus.

The CHAIRMAN. I think we will, and I'm going to ask Mr. Chertoff to resume his questions.

Mr. Lindsey, do you have a copy of the document?

Mr. LINDSEY. No, sir, I do not. I have a copy of the January document, not an April document.

Mr. CHERTOFF. You have an April document, too. I'll get to it in a second.

Mr. LINDSEY. No, sir, I do not.

Mr. CHERTOFF. You don't have DKS 180?

Mr. LINDSEY. No, sir, I do not.

Mr. CHERTOFF. We'll get you another copy, then. Take a look at that. I want to take you through this for a moment.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Mr. Chairman, could I inquire, was this a document that was in Mr. Foster's papers?

Mr. CHERTOFF. DKS 180 was a document that was originally in Mr. Foster's office and was removed and ultimately made its way over to Williams & Connolly.

Senator DODD. How about the April 6, 1992 letter?

Mr. CHERTOFF. That is the April 6, 1992 letter. The January 10 document is actually a public record, and I bring it up only because Mr. Lindsey was asked questions about this in his deposition, and I wanted to make sure we had on hand material to refresh his memory.

Now, looking at the January 10, 1992 document, am I correct that it was in January 1992 that you added the two Perry County loans?

Mr. LINDSEY. Yes, you are correct.

Mr. CHERTOFF. Do you have DKS 180, the April 6, 1992 document?

Mr. LINDSEY. I now have a copy of that.

Mr. CHERTOFF. On DKS 180, let's go down to the signature. You personally signed the letter on April 6, 1992 transmitting another amendment to this public financial disclosure report that disclosed that "Governor and Mrs. Clinton are personal guarantors of a mortgage loan to Whitewater Development Company"; correct?

Mr. LINDSEY. Apparently I did, yes.

Mr. CHERTOFF. You notice there is a little fax line at the top here? That's a fax line from Swidler & Berlin dated April 7, 1992?

Mr. LINDSEY. I can't see the April. I see 7/92.

Mr. CHERTOFF. Was Swidler & Berlin the firm that was involved in counseling also on matters of election law?

Mr. LINDSEY. I don't know if that was true or not.

Mr. CHERTOFF. You don't know——

Mr. LINDSEY. Jim Hamilton is in that firm, but I don't know if he was counseling on election law or not. David Ifshin was the counsel to the campaign. Jim Hamilton was a member of our lawyers' committee and could well have been involved, but I don't have any direct knowledge that he was involved.

Mr. CHERTOFF. That's the same Jim Hamilton who is the Foster family lawyer; correct?

Mr. LINDSEY. Correct.

Mr. CHERTOFF. Now, as I said, DKS 180 was actually in Mr. Foster's files. Do you know why Mr. Foster would have carried forward this document a year later in his files in the White House and why he would have had them there in July 1993?

Mr. LINDSEY. No, sir, I do not.

Mr. CHERTOFF. Mr. Lindsey, let me ask you, this April 6, 1992 amendment, this amendment disclosing the Whitewater mortgage loan guaranteed by the Clintons, does the timing of that have anything to do with the fact that Jeff Gerth had written articles in March of the same year?

Mr. LINDSEY. I don't know that. It could well have been that the article in March reminded the Clintons that they were guarantors on the Whitewater loan and they then decided they needed to amend their form to reflect that.

Mr. CHERTOFF. Ms. Thomases, do you have a recollection that in the wake of the Jeff Gerth articles in March there was an effort made to amend the disclosure form to disclose that personal guarantee?

Ms. THOMASES. I had no knowledge of the disclosure forms.

Mr. CHERTOFF. You weren't involved in that?

Ms. THOMASES. I was not in any way involved in the disclosure forms.

Mr. CHERTOFF. You knew, Ms. Thomases, that Mr. Foster was, in fact, working on disclosure matters and tax matters for the Clintons and the White House; right?

Ms. THOMASES. Yes, I did.

Mr. CHERTOFF. Did you ever talk to him about that?

Ms. THOMASES. On one or two occasions he mentioned it to me.

Mr. CHERTOFF. How did it come up?

Ms. THOMASES. It came up in his bemoaning how imperfect the records were.

Mr. CHERTOFF. When you say "how imperfect the records were," whose records?

Ms. THOMASES. The records of the Clintons and the Clintons' accountant, how imperfect they were in terms of a clear understanding of how the records for the transaction had, in fact, been kept.

Mr. CHERTOFF. Did he tell you that he was having difficulty trying to figure out how to handle the taxes for 1992 because of the problems with the records?

Ms. THOMASES. He did mention it. Mostly I advised him that what he should do is get a first-class tax lawyer to, in fact, go over it for him.

Mr. CHERTOFF. Did he tell you why he had in his files or why he was keeping in his files this copy of the Swidler & Berlin fax document relating the April 6 amendment?

Ms. THOMASES. We never discussed anything that specific.

Mr. CHERTOFF. Now, I'd like to move a little further through Mr. Foster's file, the same file here. Actually, sequentially held in the file, according to what was produced to us by Williams & Connolly, right next to this document about amending the Presidential disclosure form, is DKS 178 and 179, if I could put those up?

Mr. LINDSEY. I do not have those.

Mr. CHERTOFF. Let's make sure the witness has a copy, and let's put them up on the Elmo.

This document is a financial statement to Perry County Bank, Perryville, Arkansas named Bill Clinton and Hillary Rodham Clinton, and it's dated May 21, 1990. This was also in the file right up next to the——

Mr. LINDSEY. I'm sorry, that was not what was handed to me.

Mr. CHERTOFF. You don't have DKS 178 and 179?

Mr. LINDSEY. I was handed 179 and a document that says "public financial disclosure," but it's a different form than the one you have.

Mr. CHERTOFF. You should have two pages. All right. You have both pages of that now, Mr. Lindsey?

Mr. LINDSEY. I guess.

Mr. CHERTOFF. You have the financial statement to the Perry County Bank; right?

Mr. LINDSEY. Yes.

Mr. CHERTOFF. At the top of that—it's difficult to read on these Xeroxes; I can tell you I've read——

Senator SARBANES. Mr. Chertoff, I want to be sure exactly what document we're working off of. Could I inquire as to exactly——

Mr. CHERTOFF. This is not a Presidential disclosure form. This is a bank application, a financial statement to the Perry County Bank. It's DKS 178 and 179.

Senator KERRY. Can we have it here, too?

Mr. CHERTOFF. I think we furnished a copy. This, of course, to be clear, is a document that Mr. Ben-Veniste and I located when we went through the files in Mr. Kendall's office, maybe about a month ago. It seems like a year now, but I think it was only about a month ago.

Senator SARBANES. So this is 179?

Mr. CHERTOFF. Yes. Then 178; I think the Bates number is a little bit obscured.

Mr. BEN-VENISTE. Maybe we need some time to get these documents copied.

Senator KERRY. Mr. Chairman, could we clarify once again this document, because I——

The CHAIRMAN. This document was apparently one that Mr. Ben-Veniste and Mr. Chertoff were able to obtain from Mr. Kendall. It came from the files that were turned over that went eventually from the White House to the office of Williams & Connolly, Mr. Kendall, and then was made available to us about a month ago.

Senator KERRY. Do I understand it's 179 and 178?

Mr. CHERTOFF. Yes, there are two pages. I believe the 178 was cut off by Xeroxing before we received the document.

The CHAIRMAN. Down at the lower right-hand side, you see 178 and—

Senator SARBANES. It's just the 1.

The CHAIRMAN. It's just the 1, but that's document 178. The Xerox did not totally—

Senator SARBANES. They don't have the 78 on it.

Mr. CHERTOFF. All right.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Now, this is a document which, again, if I can call your attention to the top, contains a fax line that's a little difficult to see—probably from the multiple times we've copied this—but it indicates the legend "Clinton for President" as the fax originator of this document. "Clinton for President" was the title of the campaign organization; correct?

Mr. LINDSEY. Correct.

Mr. CHERTOFF. Have you ever seen this document before, Mr. Lindsey?

Mr. LINDSEY. Not that I recall.

Mr. CHERTOFF. Do you know how this document wound up or why Mr. Foster kept this document in his files?

Mr. LINDSEY. No, sir, I do not.

Mr. CHERTOFF. What about you, Ms. Thomases, do you know how this got into Mr. Foster's files?

Ms. THOMASES. I've never seen this document before, and I have no idea how it got into Mr. Foster's files.

Mr. CHERTOFF. Do you know why he would have kept this next to the files he was keeping on the Presidential disclosure statement regarding Whitewater?

Ms. THOMASES. No, I have no idea.

Mr. CHERTOFF. Now, I'd like you to look at the form and maybe you can help us out a little here, Mr. Lindsey. I take it you've seen forms like this?

Mr. LINDSEY. I may have seen this one, but I don't recall.

Mr. CHERTOFF. Does this seem to you to be one of the applications for one of the two Perry County Bank loans that were obtained in the 1990 campaign and were disclosed in 1992 in the January amendment?

Mr. LINDSEY. It's hard to say. We had more than two bank loans in the 1990 campaign, some of which were paid back. So it's hard for me to know which two were still outstanding and are reflected on the financial disclosure statement. It could be, it is around the date of one of the bank loans from the Perry County Bank during the 1990 campaign.

Mr. CHERTOFF. You remember there being—

Senator KERRY. Mr. Chairman, could I just ask a question, again for clarification?

The CHAIRMAN. Yes.

Senator KERRY. I'm not trying to slow the process up. I just want to understand something.

The CHAIRMAN. Surely.

Senator KERRY. Were these documents the subject of the deposition at all?

Mr. CHERTOFF. I don't believe these documents were raised in the deposition. These documents were, however, documents which were in Mr. Foster's office.

Senator KERRY. I understand that, but I want to go through the process. Were these documents available to counsel at the time of the deposition?

Mr. CHERTOFF. I didn't take Mr. Lindsey's deposition, but I don't believe this issue came up——

Senator KERRY. Could I ask if our counsel has seen these?

Mr. CHERTOFF. Counsel have seen them because we both got them.

Mr. BEN-VENISTE. We have seen them and we have argued about the relevance of the subject matter in terms of the detail that has gone into these hearings.

Senator KERRY. Were these documents available, Counsel, at the time the deposition of Mr. Lindsey took place?

Mr. CHERTOFF. I believe that they were available. I think most, both Mr. Ben-Veniste and I——

Senator KERRY. But they were not the subject then of that deposition?

Mr. CHERTOFF. These particular documents were not the subject of that deposition.

Senator KERRY. If I could ask another question. I understand these were in the personal files that were sent to the personal lawyers; is that correct?

Mr. CHERTOFF. That is my understanding; that's what we've been told.

Senator KERRY. These were turned over to the Committee on what basis?

Mr. CHERTOFF. These were the documents I think Mr. Ben-Veniste and I, after going back and forth between the Committee and the lawyers, sat down with Mr. Kendall and reviewed, and then when we selected documents, these were in the group that was furnished to us.

The CHAIRMAN. I think there was a question as to whether or not some of these documents were redacted; is that not correct?

Mr. BEN-VENISTE. We looked at——

Mr. CHERTOFF. These are not redacted.

Mr. BEN-VENISTE. We went over to look at redacted documents to assure ourselves for the Committee that these redactions were appropriate. That is, that those redactions did not exclude from the documents Whitewater-related material. In fact, we assured ourselves, and the Chairman has made a statement, that there were no improper redactions. At the time we went through the materials, we considered whether at that time there were other materials which might be relevant to other phases of our inquiry as we go through the different stages of these hearings. We felt that it was appropriate at that time to identify those documents and request them.

But the issue as to whether they are appropriately gone into, into depth, with witnesses who haven't seen them and haven't been prepared to testify on the substance of these issues is, I think, a real issue.

Senator KERRY. That's part of the issue that I'm raising. That's a first threshold. I think there are several questions raised which just concern me, Mr. Chairman. I want to know where we are with respect to it. These are personal documents, and I wonder if there is any issue of privilege or any question as to whether or not these were meant, at this point, to be made public. Is there any issue as to that?

The CHAIRMAN. Let me say this: These documents were turned over by Mr. Kendall to the Committee, represented by both counsel. So I can't see how——

Senator KERRY. I'm just trying to understand because it's the first time I've seen them.

The CHAIRMAN. Again, they have been available to the Committee, both counsel have had them for approximately a month.

Senator KERRY. I understand. But the issue, Mr. Chairman, is—I mean, how many pieces of paper do we have before the Committee?

The CHAIRMAN. Senator——

Senator KERRY. Each of us are preparing for these hearings on the basis of what we believe the scope of the hearings to be. I can understand where counsel is going. Where counsel is going——

The CHAIRMAN. Mr. Lindsey has indicated that there are things that he has done and that he hasn't done as it relates to these papers and these documents that were in Vince Foster's office. I think counsel is attempting to ascertain what he did, what he didn't do, what he knew, what the documents were about, why it may or may not have been appropriate to remove them, and why people may have been anxious to remove them——

Senator KERRY. But Mr.——

The CHAIRMAN. —and those are things that all come within the scope of this Committee.

Now, to suggest that the scope is so limited as it relates to our job that we cannot inquire into the significance of certain documents would be to tie our hands and make this investigation absolutely impossible.

Senator Sarbanes and I will attempt to receive a clarification from the Independent Counsel—because we are working under some limitations here—so that we can proceed in a manner that will provide a more complete picture and give us an opportunity to do our job more thoroughly and comprehensively instead of taking bits and pieces as we've been doing. Our cooperation with the Independent Counsel has impeded, to a certain extent, the ability of this Committee to get the facts in an orderly way.

So we're going to attempt to address that. I will allow, at this point in time, Mr. Chertoff to pursue this line. There will come a point in time, when we may reach an area outside the slope, but I think these are documents that were turned over to us, and that were in Mr. Foster's files that went to his lawyer, and he certainly has—as it relates to another document that refers to Mr. Lindsey and to Whitewater—the right to pursue this. He's trying to refresh his recollection; he may or may not remember, and these documents may help. It is absolutely within the bounds of this Committee to do that, and suggest that we move on otherwise we'll be here until midnight.

Senator SARBANES. Mr. Chairman, maybe Mr. Chertoff should self-curtail himself in this sense. The very ground rules that Mr. Chertoff and his associates laid down to people when they were deposed was that we would focus on paragraph 1.B.1 of the resolution. We are now moving into other paragraphs of the resolution which no one, in a sense, prepared for and which were not to be the focus of this set of hearings.

Now, I'm not quite sure what has triggered all of this. I realize the House has gone off on a path that we thought was precluded to us by the Independent Counsel, and that may now have caused some anxiety here about that situation since they seem to be getting into those areas, but that was not what we were going to do, and we had a pretty well-defined focus. Obviously, at some stage of our hearings, we'll get into some of these other matters as well, to the extent that they're covered by other paragraphs of our resolution.

But I do think we're now moving outside of the ground rules for this set of hearings, and certainly outside of the very ground rules that counsel gave to people when they were deposed. In fact, Mr. Lindsey himself was told. He said, "They quoted the resolution generally, and broadly about what we were to look into." He then went on to tell Mr. Lindsey, now, in section 1.B.1 of Senate Resolution 120 there's an authorization for an investigation into "whether improper conduct occurred regarding the way in which White House officials handled documents in the office of White House Deputy Counsel Vincent Foster following his death. Do you understand that this particular provision will be the focus of your deposition today?" Mr. Lindsey said yes. I think, in terms of just the orderly procedure of this Committee, that should remain our focus as it has been our focus. We'll complete this set of hearings, and then at a subsequent time we will schedule other aspects of the resolution.

The CHAIRMAN. Senator, we have had endless discussions about the relevance of the documents that were removed. It's always been the thrust, why were they removed, what was there, et cetera. Now, these documents were removed, so there is a relevance. The——

Senator BOND. These were removed by Ms. Williams and taken to the residence?

The CHAIRMAN. These are the documents that were removed by Ms. Williams, taken to the residence and eventually found their way——

Senator BOND. So these are precisely the subject matter that we are inquiring about today as to what went out of the office?

The CHAIRMAN. That is correct.

Senator BOND. Thank you for the clarification.

Senator KERRY. Mr. Chairman, I have no problem with that part of it. That's not the issue here and, again, I want to come back to this. The question here is not whether these documents are relevant to the overall investigation, but I think what's happening here is you are trying to get these documents in at this point in time through a witness who, on the record of the deposition—I mean, these documents weren't important enough for you to ask him questions at the deposition.

If we're going to apply the Bob Packwood standard of hearings, we ought to ask ourselves why it's necessary. This shows exactly why you have to have a hearing. So we come in afterwards with stuff we want to ask questions about, but the fact is this witness wasn't at any of those meetings. He's at one meeting. He had nothing to do with the decision about the documents.

The CHAIRMAN. Senator, I——

Senator KERRY. No, wait a minute.

The CHAIRMAN. Senator, if I might, it's exactly that point. I don't know how many meetings, if any, he was at.

Senator KERRY. Yes, we do because we have his deposition, Senator.

The CHAIRMAN. You're testifying; you've read the deposition. If he says that he was at one meeting or two meetings, if there is a way in which to refresh his recollection, if indeed there are documents that cast doubt on his testimony or conflicts with his testimony, it is relevant. Now, you say you know. I don't know. Certainly I don't think the other Members of the Committee know. We're attempting to get the facts and put them on the record. I think that's a reasonable, fair way to do it.

Senator KERRY. That is absolutely reasonable, but the main point here is that these documents, these particular bank statement documents——

The CHAIRMAN. Yes?

Senator KERRY. —were not part—as he said earlier, these are not, number one, he——

The CHAIRMAN. Senator, are you saying that we can't ask any witnesses anything outside of the depositions that they've given? Because I would suggest——

Senator KERRY. That's a good argument to go back and review the resolution we just voted on the other day.

The CHAIRMAN. I don't believe that we are so circumscribed that Senators cannot ask witnesses questions that were not raised in their deposition or present to them materials that were not shown to them at the deposition.

Senator KERRY. Of course not, Senator.

The CHAIRMAN. Because no one could do anything. If we want to get the facts and get the information, obviously, we've got to have the ability to go beyond the scope of the depositions.

Senator KERRY. I couldn't agree with you more, Senator. I absolutely agree with that standard, and I hope we'll all apply it in the future. My only point is that this particular document, according to his own testimony previously and according to his knowledge of what Vince Foster was working on or wasn't working on or had in his office, doesn't refresh his memory about anything. Moreover, it has nothing to do——

The CHAIRMAN. Senator, I don't know because I haven't heard from the witness any explanations or only very limited explanations as to how he knows about them, does he know about them, did he prepare them, what was—it seemed to me at one point he said he wasn't aware of a report, but then when he was shown it——

Senator KERRY. Senator, even if he knew about them——

The CHAIRMAN. Then there is a document which would seem to indicate that he had intimate knowledge and prepared it. Now, look, I'm not sure where this will lead, but it seems to me that we have a right to obtain the information.

Senator KERRY. The point, Senator, is all of this is relevant to the overall inquiry. I have no problem with that. I have no problem with any one of these documents being asked about. They ought to be. I want every question asked and every answer provided.

The CHAIRMAN. Do you believe by our undertaking that——

Senator KERRY. Do I just——

The CHAIRMAN. —we are going to be infringing upon the Special Counsel's work?

Senator KERRY. Could I once finish the point?

Senator FAIRCLOTH. How long is it going to take?

Senator KERRY. The point is simply that this document does not pertain to the issue of his part in the handling of the documents. That's the point. He could have prepared this entire document, and this entire document could have been sitting in Vince Foster's office for however long and been moved. It has nothing to do with this witness' testimony about the handling of the documents on the 20th and the 21st. That's the point.

The CHAIRMAN. My point is——

Senator KERRY. So it's a backdoor way to get some documents in at a point in time that they have nothing to do with the question of the handling of the documents. I just think it's a lame way to go about making things public.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Mr. Chairman, since we are expressing what we are thinking, I think it is inappropriate for the Senator from Massachusetts, and as a Member of this Committee, to have reference to the Senator Packwood hearings in any comparison. I think it is totally inappropriate, and as a Member of this Committee I am very disappointed in the remarks by the Senator from Massachusetts.

Senator KERRY. Let me say to the Senator that that offers a comparison——

The CHAIRMAN. All right——

Senator MURKOWSKI. It is totally inappropriate.

Senator KERRY. Now, look, I want to say to my friend from Alaska——

The CHAIRMAN. Wait. Please. Senator, please——

Senator KERRY. Senator, it has never been inappropriate in the U.S. Senate for a U.S. Senator to comment on something that we vote on in public which establishes a standard by which we will make judgments. So I do not think it is inappropriate at all. The Senator may not like to live with it, but it is not inappropriate.

Senator MURKOWSKI. I will tell you what I have to live with, Senator——

The CHAIRMAN. I will rule at this point. The ruling——

Senator MURKOWSKI. I think it is totally inappropriate, and I think the Senator from Massachusetts knows it.

The CHAIRMAN. Senator Murkowski, your position is in the record.

Senator Kerry, you have put forth why you are concerned about the introduction and the questioning of this document. I believe that it goes to the question of knowledge, intent, and motive as it relates to the how and why of these documents and the manner in which they were handled.

Now, I am going to permit Mr. Chertoff to continue.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Senator FAIRCLOTH. I would hope he would continue uninterrupted so we could get on with it.

The CHAIRMAN. Well——

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. LINDSEY. Mr. Chertoff, let me just clarify one thing that occurred to me while that was going on——

The CHAIRMAN. Mr. Lindsey, move the microphone. Don't be afraid of moving it up there.

Mr. LINDSEY. I am not sure it is on.

My sense is that the May loans had been paid off before the 1992 campaign, so it would not have been one of the two loans reflected in the January amendment to the financial disclosure form.

Mr. CHERTOFF. That is even more puzzling then, because, as I said, just to make sure we understand exactly what the document is, this is actually a document which was in Mr. Foster's file which, by comparing it with the various indices we have, was selected by Mr. Nussbaum and Ms. Williams to go up to the residence and ultimately made its way over to Williams & Connelly after several days.

So the question is why Mr. Foster kept this in connection with his work in 1993.

Mr. LINDSEY. Mr. Chertoff, let me speculate on that, since all we are doing is speculating——

Mr. CHERTOFF. Let me ask the question, Mr. Lindsey. Let me ask the question——

Mr. LINDSEY. Let me say this——

Mr. CHERTOFF. Mr. Lindsey, let me ask a question first?

Mr. LINDSEY. All right.

Mr. CHERTOFF. Now, I want to, first of all, ask you, you have seen financial statements like this; right?

Mr. LINDSEY. I don't know if I've seen this one, but I've seen financial statements.

Mr. CHERTOFF. If you could put the second page up, I just want to make sure you recognize the signature and read us the date here. It is signed by Mrs. Clinton?

Mr. LINDSEY. Correct, on May 21, 1990.

Mr. CHERTOFF. As with all bank applications, it is certified that the information inserted or incorporated herein has been carefully read and is true and correct; right?

Mr. LINDSEY. Correct.

Mr. CHERTOFF. Now let's go back to the first page for a moment.

We had testimony from you a little earlier about the disclosure of the contingent liability of Whitewater in the 1992 financial disclosure statements.

Mr. LINDSEY. By the way, I did not prepare that document.

Mr. CHERTOFF. You transmitted it.

Mr. LINDSEY. I clearly signed the document.

Mr. CHERTOFF. Did you read it?

Mr. LINDSEY. I probably read it at the time, yes.

Mr. CHERTOFF. I assume when you sent it in you believed it was true; right?

Mr. LINDSEY. I was told it was true; yes.

Mr. CHERTOFF. You believed it; right?

[Pause.]

Are you walking away——

Mr. LINDSEY. Yes.

Mr. CHERTOFF. —from it, or are you going to stand behind what you sent in on April 6?

Mr. LINDSEY. I was told that the Clintons——

Mr. DODD. Mr. Chairman, this is really——

Mr. LINDSEY. —were guarantors on a note from Madison——

Mr. DODD. Could the witness please hold for a second?

Seriously, Mr. Chairman, I think we all understand here that this is about the handling of these documents as it relates to Vince Foster's suicide. There is an appropriate time to really go into all of these matters, and we will, and we should, but clearly here it seems, Mr. Chairman, we are going beyond that scope.

I think in fairness we did reach an agreement here among ourselves. It has been done well. We have worked well.

In the handling of the Foster papers, was this the kind of document that the Park Police would have been interested in looking at as it relates to suicide? I mean, that is really what this is all about.

There are a lot of substantive materials that we can be curious about, and as it relates to Whitewater we are going to have to get to that; but as it relates to this particular witness' involvement in the handling of those documents around the dates of July 20, the 21st, the 22nd, through the 26th and 27th, I really do think it gets beyond the scope, Mr. Chairman.

The CHAIRMAN. Senator, I understand your point. I want to make an evaluation, and I will do this in a manner in which people have an opportunity to make known their objections. Mr. Chertoff has two more questions with respect to this document. I am going to let him conclude and we will make an evaluation.

Mr. Chertoff.

Mr. CHERTOFF. Mr. Lindsey, let's go down to where it says "contingent liabilities" on the bottom of the page, if you can move the Elmo up. There is a little line drawn next to it off to the left of the document. Someone has made a little bracket. I will tell you this is the condition it was in at the time we received it from Mr. Kendall.

Do you know, first of all, Mr. Lindsey, why the contingent liability of the Whitewater guarantee was not disclosed on this financial statement submitted to Perry County Bank?

Mr. LINDSEY. I would assume, since they became aware or they remembered it was not on our first financial disclosure in the Presidential campaign, my guess is that the Clintons at the time did not recall it. After Jeff Gerth's article in March, they recalled it. This document, as you can tell, was prepared 2 years before then.

Mr. CHERTOFF. Do you know why they did not put it in the document in 1990?

Mr. LINDSEY. I assume they didn't recall it at the time, just like they didn't recall it when we first did the financial disclosure in the Presidential campaign, which is the reason why we had to do an amendment.

Mr. CHERTOFF. Did you have any discussions about this document after 1993, after January 20, 1993, this document that is up there, with anybody?

Mr. LINDSEY. No, sir.

Mr. CHERTOFF. Let me turn to you, Ms. Thomases. Did you have conversations with Mr. Nussbaum on July 21 or July 22, 1993, after Mr. Foster's death?

Ms. THOMASES. Yes, I had a conversation with Bernie Nussbaum.

Mr. CHERTOFF. One, or more than one?

Ms. THOMASES. Only one I specifically recollect.

Mr. CHERTOFF. Were you trying to reach him that day?

Ms. THOMASES. Apparently.

Mr. CHERTOFF. Did you page him in the morning at around 8 a.m.?

Ms. THOMASES. There is a record that I paged him. While I do not recollect paging him, I know I wanted to talk to him.

Mr. CHERTOFF. Where were you at the time?

Ms. THOMASES. Where was I?

Mr. CHERTOFF. Yes.

Ms. THOMASES. When I paged him?

Mr. CHERTOFF. Yes.

Ms. THOMASES. I was at the place that I usually stay when I come to Washington and stay overnight.

Mr. CHERTOFF. Where were you when you talked to him?

Ms. THOMASES. I think I must have been in my office.

Mr. CHERTOFF. In Washington?

Ms. THOMASES. In Washington.

Mr. CHERTOFF. Did you use a cell phone to talk to him?

Ms. THOMASES. I don't believe I used the cell phone.

Mr. CHERTOFF. You used the regular land-line office phone?

Ms. THOMASES. I think I used the land-line office phone.

Mr. CHERTOFF. Tell us what the conversation was concerning the handling of a review of records in Mr. Foster's office.

Ms. THOMASES. I was not looking for Bernie to talk—Bernie Nussbaum, to talk about the review of documents in Vince Foster's office. I was really trying to reach him to talk about how he was feeling and how he was doing. I had known that he and Vince had grown to be very good friends and that it was a very difficult thing for him to have lost his trusted Deputy at this particular time. I was really calling to check in with my friend to see how he was doing.

Mr. CHERTOFF. What did he say about the documents?

Ms. THOMASES. He obviously was very focused on the documents at that time, where I was not, and he proceeded to tell me not to worry, that he had a plan, that he was going to take care of them. He was, as I said in my deposition, he was venting.

He seemed to have a very clear sense that he was on top of it; he was going to handle it; that he was going to give Vince's documents to Lisa's lawyer, that he was going to give the Clintons' doc-

uments to the Clinton's lawyers, and that he was going to protect all the Presidential papers.

Mr. CHERTOFF. What did you say?

Ms. THOMASES. I said, sounds good to me.

Mr. CHERTOFF. That's it?

Ms. THOMASES. Essentially. I mean, I told him I felt bad that he was under so much pressure; that I hoped to be able to talk to him when he got back from the funeral.

We talked a little bit about why I didn't think that it would be wise for me to go to the funeral, and I asked him to convey my condolences to Lisa.

Mr. CHERTOFF. I want to get back to the documents, though. He brought up the subject of the documents?

Ms. THOMASES. Yes, he did.

Mr. CHERTOFF. Just spontaneously?

Ms. THOMASES. Yeah.

Mr. CHERTOFF. Did you know where documents were located that were in the office that were personal to the Clintons?

Ms. THOMASES. I think I did.

Mr. CHERTOFF. Is that what he focused on?

Ms. THOMASES. I didn't focus on anything.

Mr. CHERTOFF. No. Is that what "he" focused on?

Ms. THOMASES. No. He was describing that he was going to give Vince's personal papers to Lisa's lawyers, and the lawyers for the Foster estate; that he was going to take the Clintons' papers and transfer them to the Clintons' personal lawyer; but that the bulk of the papers were going to be about work in the White House and that he was going to have to reassign them.

Mr. CHERTOFF. Did he say he was going to take documents up to the residence?

Ms. THOMASES. He did not.

Mr. CHERTOFF. Now, you have testified you were calling basically just to express personal sympathy; right?

Ms. THOMASES. That's right.

Mr. CHERTOFF. When he brought up the documents, did you say to him, in substance, Bernie, why don't you just put the documents aside; I don't want to talk about the documents?

Ms. THOMASES. That was not the nature of my relationship with Bernie.

Mr. CHERTOFF. So he got into the subject of the documents, and you listened; right?

Ms. THOMASES. That's right.

Mr. CHERTOFF. Did you indicate in any way whatsoever any view about the course that he was preparing to take?

Ms. THOMASES. I indicated that it made sense to me. He had clearly thought long and hard about it, and he seemed to feel very sure of the course that he was taking. I was not predisposed to disagree with him. If I thought he was doing something terrible, I might have raised an objection, but it all sounded very well thought out to me.

Mr. CHERTOFF. Did he tell you that he had had previous discussions with the Department of Justice about how the Department of Justice wanted to do this?

Ms. THOMASES. No, he did not.

Mr. CHERTOFF. Did he tell you he talked to the Deputy Attorney General?

Ms. THOMASES. No, he did not.

Mr. CHERTOFF. Did you say to him, in substance, that you did share his view that there should not be unfettered access to the documents by police?

Ms. THOMASES. I really did not hear the term “unfettered access” until——

Mr. CHERTOFF. In substance?

Ms. THOMASES. —it wasn’t—his focus was that he was going to do it his way. That’s what I remember from that conversation.

Mr. CHERTOFF. Did you express in any way a view that in any way there should be a limitation placed upon the ability of law enforcement people to look at documents in the office?

Ms. THOMASES. No.

Mr. CHERTOFF. You expressed no such opinion?

Ms. THOMASES. No, I did not.

Mr. CHERTOFF. We have evidence in the record that Mr. Nussbaum expressed to Mr. Neuwirth that you had the view, in substance—I am not saying it is a quote—that the police should not have unfettered access to the papers in Mr. Foster’s office.

Is it your testimony that you never expressed any view like that to Mr. Nussbaum?

Ms. THOMASES. Yes, it is.

Mr. CHERTOFF. Did you talk to Hillary Clinton about the documents in Mr. Foster’s office?

Ms. THOMASES. I don’t remember ever having a conversation with Hillary Clinton during the period after Vince Foster’s death about the documents in Vince Foster’s office.

Mr. CHERTOFF. When you say during the period after Vince Foster’s death, up to what point in time would that be? During the next 2 weeks?

Ms. THOMASES. I don’t know. I mean, I haven’t given a lot of thought to the period after, the next 2 weeks, but I think it is at least 2 weeks.

Mr. CHERTOFF. During the 2 weeks after Mr. Foster’s death, you had no conversation with Hillary Clinton concerning the documents in Vincent Foster’s office?

Ms. THOMASES. That’s right.

Mr. CHERTOFF. It’s not a question of not remembering. You absolutely say you had no such conversation?

Ms. THOMASES. To the extent that I remember, I did not have a conversation.

Mr. CHERTOFF. You are firm in that belief?

Ms. THOMASES. That’s right.

Mr. CHERTOFF. Let me ask you one last question. Do you have any knowledge of any document, any note, or any part of a note that was ever discovered that contained Mr. Foster’s writing that was not turned over to law enforcement?

Ms. THOMASES. Could you repeat the question?

Mr. CHERTOFF. Do you have any knowledge of any note or writing that ever existed in Mr. Foster’s handwriting that was discovered by people in the White House and was not turned over to law

enforcement? Anything to do with his motivation about why he might have taken his life?

Ms. THOMASES. I have no knowledge of such a writing.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Lindsey, when you were deposed, do you recall being told that the focus of the deposition was to be on the handling of documents in Foster's office?

Mr. LINDSEY. Yes, sir.

Senator SARBANES. In advance of the deposition, did you have an understanding that was what the deposition would be about?

Mr. LINDSEY. Yes, sir.

Senator SARBANES. Did you therefore try to prepare yourself for the deposition in terms of refreshing your recollection and so forth?

Mr. LINDSEY. I had such very limited involvement, but I did try to refresh my memory with respect to that; yes.

Senator SARBANES. Now, I noticed when these various papers were being put before you that you were trying, I gather, to ascertain where they came from and what they were about. That had not been part of your deposition or a matter that you had prepared for, in a sense. That might come later in these hearings, but, as you understood it, it was not going to be the subject of these hearings. Is that correct?

Mr. LINDSEY. That is correct; yes.

Senator SARBANES. Did these matters arise during your deposition at the time?

Mr. LINDSEY. They asked me during my deposition whether or not I was aware of an amendment to the financial disclosure report during the 1992 campaign. I responded that I was familiar with and remembered the amendment with respect to the Perry County Bank Loans.

When I responded in that way, they went on to another subject.

Senator SARBANES. Mr. Chairman, I yield to Mr. Ben-Veniste. When Ms. Thomases returns, I have a few questions of her.

The CHAIRMAN. Certainly.

Mr. BEN-VENISTE. Mr. Lindsey, let me ask you, sir, whether you had any participation in a meeting on July 22 when there was a discussion of a procedure to be employed in terms of trying to accommodate the Park Police request for information from Mr. Foster's office?

Mr. LINDSEY. Yes. I participated in one meeting of that nature.

Mr. BEN-VENISTE. Who do you recall was present?

Mr. LINDSEY. I recall that Bernie Nussbaum was present; that Jack Quinn was there; that Bill Burton was there. I read Steve Neuwirth's testimony and he indicated he was there. I did not recall that, but he could well have been.

Mr. BEN-VENISTE. Now, with respect to that meeting, is it fair to say that at that point Mr. Nussbaum was trying to figure out a way to accommodate the request of the Park Police who are interested in looking for either a suicide note or some other writing that might reflect Mr. Foster's mental state at the time of his death or perhaps any information reflecting either financial distress or any sort of extortion threat? Do you recall that?

Mr. LINDSEY. Yes. How to accommodate that with the need for protecting documents that could be covered by one of several privileges—executive privilege, attorney-client privilege, and so forth.

Mr. BEN-VENISTE. Did Mr. Nussbaum articulate what he hoped to accomplish in terms of balancing his obligations as against the limited requests that were being made by the police?

Mr. LINDSEY. Again, I don't remember the specifics of the conversations, but the purpose of the meeting was to try to balance their needs so that they could feel that their purpose was served and yet still protect the privileges.

Mr. BEN-VENISTE. Do you recall that Mr. Quinn took the position that at that point it would be inappropriate to even permit the police to have access to Mr. Foster's office?

Mr. LINDSEY. Yes. I believe Jack took that position in the meeting.

Mr. BEN-VENISTE. Do you recall that Mr. Nussbaum disagreed and thought that he would be able to fashion some sort of a compromise whereby the police could have access to the office, and could be present while he, Mr. Nussbaum, went through the files?

Mr. LINDSEY. Yes. At the conclusion of the meeting, I think Bernie felt like he was going to try to see if he could accommodate their need with our concern.

Mr. BEN-VENISTE. Was that the first and the last of your involvement in the question of the papers in Mr. Foster's office?

Mr. LINDSEY. Bill Burton, I believe, came back to me after the meeting and indicated to me that he thought it had gone fine; that Bernie's procedures seemed to have worked; and that everyone seemed to be OK with the procedure.

Mr. BEN-VENISTE. Did there come a time when you learned that the police had reviewed all of the materials that they had identified as being of interest to them?

Mr. LINDSEY. Yes, sir, I did learn that.

Mr. BEN-VENISTE. Good morning, Ms. Thomases.

Ms. THOMASES. Good morning.

Mr. BEN-VENISTE. May I ask you how it was that you learned that Vince Foster had died?

Ms. THOMASES. I was home in my apartment in New York, and Hillary Clinton called me.

Mr. BEN-VENISTE. What do you recall about that conversation?

Ms. THOMASES. It was very sad. She told me that Vince had taken his life. We went through a period of talking about how sad we felt. We then talked about how hard it was going to be, not only on his wife, but on his three children. That is what we talked about.

Mr. BEN-VENISTE. In that conversation, did anything come up with respect to any contents of Vincent Foster's office? Any files?

Ms. THOMASES. Absolutely not. It was not that kind of a conversation.

Mr. BEN-VENISTE. Now, I believe you have indicated that Mrs. Clinton knew of your practice to come to Washington on a regular basis on each Wednesday. Is that correct?

Ms. THOMASES. That's correct. In fact, she asked me specifically whether I was going to be going to Washington the next day, and I said to her I was not able to go early because I had some work

that I had to complete with respect to my practice which required that I go to my New York office on Wednesday morning, but as soon as that task was completed that it was my plan to go to Washington for some other business that I needed to do that day and that, yes, I would be in Washington.

Mr. BEN-VENISTE. At approximately what time did you arrive in Washington?

Ms. THOMASES. Some time after 2 p.m.

Mr. BEN-VENISTE. So it is fair to say that there was nothing in the conversation between you and Mrs. Clinton that caused you to revise your plan to work in your office in New York, I take it, during the morning that Wednesday of July 21, and then come to Washington as you had planned to?

Ms. THOMASES. There was nothing in my conversation with Mrs. Clinton that suggested that I should, and I could not because I had an obligation in another area.

Mr. BEN-VENISTE. What was the request that was made of you by Mrs. Clinton once you came to Washington in that initial conversation?

Ms. THOMASES. Hillary Clinton asked me to please—she asked me if I had intended to go to the White House. I said I thought that I might stop by there and see how people were doing. She said, would you please find out when my husband, the President, is going to be there and please be sure to see him; also, please be sure to talk to Maggie Williams to see if she were OK.

Mr. BEN-VENISTE. What did you do once you arrived in Washington?

Ms. THOMASES. Since I didn't have to be at my Washington office until close to 4 p.m., I went immediately to the White House to see if the President were available, which I didn't know, and to talk to Maggie.

Mr. BEN-VENISTE. Did you talk to the President?

Ms. THOMASES. I did not talk to the President at that time. I came back to the White House after I completed my work at my Washington office and saw him at that time.

Mr. BEN-VENISTE. Later on in the afternoon or early evening?

Ms. THOMASES. Yes, in the early evening.

Mr. BEN-VENISTE. What was the substance of that conversation?

Ms. THOMASES. It was more reviewing, again, our sense of helplessness and sadness that we had not been as sensitive as we might have been to what we then believed was a tremendous amount of pain that Vince must have been in.

We talked about that. He was very specific about how he had had a conversation with Vince and had intended to have him at the White House, and we each talked about opportunities in which we could have, in fact, perhaps, had we known of the problem, done something.

Mr. BEN-VENISTE. Did, in this conversation you had with President Clinton, any question arise with respect to the contents of Mr. Foster's office?

Ms. THOMASES. None whatsoever.

Mr. BEN-VENISTE. Who else did you see that day?

Ms. THOMASES. I saw numbers of people who were milling around the White House coming to terms with their feelings about

Vince's death. It was like being at a wake. I can't specifically tell you who I saw and who I talked to. I did not initially see Maggie when I first went to the White House that day.

Mr. BEN-VENISTE. Did you learn that President Clinton had assembled the White House staff and spoken to them as a group in terms of trying to console them in their grief?

Ms. THOMASES. Yes, I had learned that. I, in fact, regretted that I had arrived too late to be there to hear his statement, and also to hear Mack McLarty speak. I did regret that I was not there because it sounded as if it was a memorial meeting that gave some solace.

Mr. BEN-VENISTE. Did you understand that Mr. Nussbaum also spoke at that meeting?

Ms. THOMASES. So I was told.

Mr. BEN-VENISTE. Now, do you recall who else you saw that day?

Ms. THOMASES. I know that it is hard to imagine, but I think the only people that I specifically remember seeing, because I was so focused on seeing the President, were—I stopped by and saw some of the young women who had worked for me during the campaign who I knew would have been rather upset at the idea of a suicide. I don't really remember specifically. I mean, for example, I am sure I wanted to see Bruce, but I actually do not specifically remember seeing Bruce.

Mr. BEN-VENISTE. Let's go to the following day. Did you have a conversation with Mr. Nussbaum on the morning of the 22nd?

Ms. THOMASES. Yes, I did.

Mr. BEN-VENISTE. That is a conversation that you have described in some detail?

Ms. THOMASES. Yes.

Mr. BEN-VENISTE. Did there come a time when you had a follow-up conversation with Mr. Nussbaum in terms of the procedure that was employed for the review of the documents?

Ms. THOMASES. I think I spoke to him not necessarily that day but at some subsequent time in which he told me that he felt that it had gone pretty well, but I don't think it was necessarily on that day.

Mr. BEN-VENISTE. Now, Ms. Thomases, you were asked about whether there was some other writing than the one that we have all been talking about over these 4 weeks of hearings that was found but never disclosed. You have answered that question in the negative.

Let me ask you whether you have any knowledge from any source that any document or writing whatsoever from Mr. Foster's office was either destroyed or obfuscated or hidden in some way from the investigators?

Ms. THOMASES. I have no knowledge of any document that was hidden or not disclosed to the investigators.

Mr. BEN-VENISTE. Mr. Lindsey, let me ask you the same question, sir. Do you have any knowledge from any source as to whether any document in Mr. Foster's office was obliterated, destroyed, shredded, or otherwise made unavailable to the police in connection with the request that they had made?

Mr. LINDSEY. No, sir, I do not.

Ms. THOMASES. I would just like to say, I don't know that everything was made available to them. I just don't know that anything was destroyed or obliterated.

Mr. BEN-VENISTE. That was my question——

Ms. THOMASES. Yes.

Mr. BEN-VENISTE. —Ms. Thomases, whether you have knowledge—not direct knowledge; that was not the limitation of my question, so that you understand it—whether you have knowledge from any source, direct or indirect, as to whether any material from Mr. Foster's office was in any way destroyed?

Ms. THOMASES. I have no information.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I just wanted to follow up on something in your opening statement because I did not see it come out in the depositions.

You would come to Washington every Wednesday. Is that correct?

Ms. THOMASES. Pretty much every Wednesday. It was an easier way for me to organize my life so that if people wanted to see me they knew that the day they could see me in Washington was on a Wednesday.

Senator SARBANES. How long had you been following that practice?

Ms. THOMASES. I started doing it shortly after 1982.

Senator SARBANES. 1982?

Ms. THOMASES. 1982.

Senator SARBANES. So you would come down to your firm's Washington office every Wednesday, or more or less every Wednesday?

Ms. THOMASES. Yes.

Senator SARBANES. So when you came on the Wednesday which was the day after Vince Foster's death, that was a regular scheduled visit to Washington?

Ms. THOMASES. Yes, it was. I had some business to do that afternoon at my office, which is why I left the White House after originally coming and went over to my office.

Senator SARBANES. Had you been programmed to come to Washington that Wednesday before Vince Foster's death?

Ms. THOMASES. Yes, I had been. I was supposed to be there Wednesday afternoon, and I ended up staying over. I might have stayed over anyway because I had a noon meeting the next day, on Thursday, in Washington.

Senator SARBANES. I see. But when you found out about Vince Foster's death on Tuesday night, you were already scheduled to come to Washington on Wednesday as part of your regular schedule for coming to Washington?

Ms. THOMASES. Yes, Senator, I was.

Senator SARBANES. All right. Now, do I understand that on these visits to Washington, once the Clinton Administration took office, you would visit with your various friends on occasion in the Administration?

Ms. THOMASES. Yes, I did.

Senator SARBANES. You would go around and see everybody? Was that the idea, and touch base, as it were?

Ms. THOMASES. I didn't see everybody——

Senator SARBANES. All right——

Ms. THOMASES. —but I tried to touch base. I primarily went to see people—particularly the scheduling people—who continued to include me in their thinking about how best to complete the schedule.

Senator SARBANES. So that was, in a sense, a carry-over from the work you did during the campaign?

Ms. THOMASES. Yes, it was.

Senator SARBANES. I yield the balance of my time to Senator Kerry.

Senator KERRY. Mr. Lindsey, if I could come back from that series of questions, I just want to try to clarify some things with you if I can.

Did you have anything to do with the search of Vince Foster's office?

Mr. LINDSEY. No, sir, other than I attended this one meeting.

Senator KERRY. Correct, but I want to go through this sequence here for a minute. I need to see if I can just ascertain your involvement with a precision that I think is not there at this point.

On the evening that you learned of his death, you were at the house?

Mr. LINDSEY. I was at the White House.

Senator KERRY. You were at the White House. You had some conversation with the President, but you never went over into Vince Foster's office that evening?

Mr. LINDSEY. That's correct.

Senator KERRY. Did you have any contact with his office? Were you present in his office at any time the next day?

Mr. LINDSEY. No, sir.

Senator KERRY. Were you present at any time in any of the discussions with the Park Police?

Mr. LINDSEY. No, sir.

Senator KERRY. Were you present at any time in any of the discussions with the Justice Department?

Mr. LINDSEY. No, sir.

Senator KERRY. Were you present on the second floor area at any time on the 21st or the day after?

Mr. LINDSEY. Not that I recall

Senator KERRY. Were you present with Maggie Williams or any of the other parties that were searching through files?

Mr. LINDSEY. No, sir.

Senator KERRY. Were you part of the decision at all that had to do with the transfer of the box to the residence?

Mr. LINDSEY. No, sir.

Senator KERRY. Did you have any knowledge of a box being transferred to the residence?

Mr. LINDSEY. No, sir; not at the time.

Senator KERRY. Did you have any knowledge of anything at that time being put into the residence?

Mr. LINDSEY. No, sir.

Senator KERRY. On the day after that, did you have any conversation with Bernie Nussbaum that day?

Mr. LINDSEY. Which day are we talking about?

Senator KERRY. The 21st.

Mr. LINDSEY. Not that I recall——

Senator KERRY. The day after——

Mr. LINDSEY. —but, probably, I think, after he spoke at this service we had at noon, I would have gone up to him and told him I appreciated his comments.

Senator KERRY. But you have no recollection of any substantive conversation?

Mr. LINDSEY. No, sir.

Senator KERRY. Did you have any discussions with the Justice Department that day or the next day?

Mr. LINDSEY. No, sir.

Senator KERRY. Did you have any knowledge whatsoever of the specific documents that were in Vince Foster's office?

Mr. LINDSEY. No, sir.

Senator KERRY. So your first contact—and I understand only contact—with the handling of the documents, which is the subject of today's hearing, was the one meeting that took place in the Chief of Staff's Office. Is that correct?

Mr. LINDSEY. That is correct.

Senator KERRY. Present at that meeting were?

Mr. LINDSEY. Bernie Nussbaum, Jack Quinn, Bill Burton, myself; I now know Steve Neuwirth says he was there, but I do not recall his being there.

Senator KERRY. How did you come to be at that meeting?

Mr. LINDSEY. I think Bernie asked me to join it.

Senator KERRY. The subject of that meeting was?

Mr. LINDSEY. How to accommodate the Park Police's desire to look for a suicide note with the various privileges that would exist with respect to the documents in Vince's office.

Senator KERRY. Did you personally take part in that conversation?

Mr. LINDSEY. Yes. I think in the end I came out about where Bernie was, which was that we could probably set up some procedure by which he would describe the documents to them and indicate that they had nothing to do—they were not suicide notes; they did not go to Vince's state of mind. So I think there were people who wanted to be more aggressive, if I can use that term, but I think I came out about where Bernie came out.

Senator KERRY. When you say "more aggressive," can you describe precisely what you mean by that?

Mr. LINDSEY. I think Jack Quinn's position was that we should not allow them into the room at that time.

Senator KERRY. Do you recall the reason stated for that?

Mr. LINDSEY. Again, there were documents that I was told had all sorts of privileges; had executive privilege, attorney-client privilege, perhaps work product privilege; and that, therefore, until those issues could be resolved, others whose presence would violate those privileges should not be there.

Senator KERRY. Did you accept at that time the legitimacy of those issues with respect to privilege?

Mr. LINDSEY. Oh, absolutely.

Senator KERRY. On what basis?

Mr. LINDSEY. I am now in the Counsel's Office, and one of the things we deal with every day is how to accommodate various needs of Senate Committees, House Committees and others with the privileged nature of many of the documents that we have in our offices.

Senator KERRY. Let me ask you directly, Mr. Lindsey, was there any discussion there among those present about any issues of embarrassment or liability or questions that you somehow felt were of particular concern?

Mr. LINDSEY. Absolutely not. It was simply a question of the legal principles involved.

Senator KERRY. How long did this discussion go on?

Mr. LINDSEY. I am guessing 35 to 40 minutes. It could have been longer than that, or shorter than that.

Senator KERRY. Were you able to come to a conclusion among yourselves as to how this review or investigation should be conducted?

Mr. LINDSEY. I think in the end Bernie, who was going to have to make the call, decided on a procedure that he thought would accommodate both the Park Police's need and the privilege issue.

Senator KERRY. Was there any discussion at all of any documents having been moved anywhere at that point in time?

Mr. LINDSEY. No, sir.

Senator KERRY. Did anybody know of any documents having been moved at that time?

Mr. LINDSEY. Not that I am aware of.

Senator KERRY. Was that your only contact with the entire question of the handling of documents?

Mr. LINDSEY. Other than Bill Burton reporting back to me after the procedure that he thought it had gone fine.

Senator KERRY. Now, the documents that you were shown here this morning, had you seen all of those documents previously?

Mr. LINDSEY. No, sir. Some of them I maybe had never seen before.

Senator KERRY. Had you ever seen the Perry County Bank document before?

Mr. LINDSEY. It is possible in May 1990 when we filed it with the Perry County Bank that I saw it then, but I have not seen it since then.

Senator KERRY. Your role within the campaign with respect to the letter you wrote to the Federal Election Commission was what?

Mr. LINDSEY. I was originally the Treasurer; later, the Deputy Treasurer of the 1992 Presidential campaign.

Senator KERRY. But in 1993, I believe it was, when you sent—yes, it is 1992, April—

Mr. LINDSEY. I was Campaign Director on the campaign, but when we initially filed our papers with the Federal Election Commission, I was designated the Treasurer of the committee. Later, when Bob Farmer became the Treasurer of the committee, I believe they designated me as a Deputy Treasurer.

Senator KERRY. That letter you sent was a normal part of the campaign finance disclosure process?

Mr. LINDSEY. Yes. Again, I assume that someone, after the Jeff Gerth story, realized that there was this contingent liability and felt like we needed to amend our form.

Senator KERRY. You are now in the Counsel's Office. Is that correct?

Mr. LINDSEY. Correct.

Senator KERRY. With respect to campaign finance issues and disclosure, those are ongoing legal issues that involve the President of the United States and the public, do they not?

Mr. LINDSEY. Yes.

Senator KERRY. Is it a normal course of business within the White House for the White House Counsel's Office to be involved in campaign finance disclosure issues?

Mr. LINDSEY. Yes. There are many issues that involve the President both as a candidate and as the President, and, therefore, to that extent the White House Counsel's Office will be invoked as well as outside counsel.

Senator KERRY. Is there anything unusual about campaign finance documents or the underlying documents on which they might be based being part of the Counsel's records?

Mr. LINDSEY. No, I would not think so. In addition, if you were in the process of preparing financial disclosure statements, my sense is you would want previous financial disclosure statements to review as part of that process.

Senator KERRY. Now, I take it that each of these documents which were part of the documents sent over to the Office of Personal Counsel—which is where these have purported to come from on the basis of Counsel's statement—is a copy of a document that is on public record in some other public agency or private institution. Is that correct? In other words, this letter to the FEC is on record with the FEC?

Mr. LINDSEY. Yes, that's correct.

Senator KERRY. The bank document is on record with the bank?

Mr. LINDSEY. That would be correct, as well.

Senator KERRY. The prior financial disclosure ethics form is on record in the public agency either in the Ethics or, I suppose, in the Campaign Finance?

Mr. LINDSEY. Correct.

Senator KERRY. So none of these documents were sole documents that could somehow be scurried away into oblivion?

Mr. LINDSEY. No, sir.

Senator KERRY. Now, do we have time—I will wait for my other round. I do have some questions for Ms. Thomases.

The CHAIRMAN. Senator, why don't you continue.

Senator KERRY. I would just like to say, to clarify the record on our earlier exchange, that, Mr. Chairman, I think you have done an outstanding job here. I want to say that publicly: that my objection previously is not based on any sense of unfairness. I think you have done a wonderful job of keeping an even keel here and of being extremely judicious in this process.

I also have some questions I want to ask Ms. Thomases which I consider hard questions, but I am not trying to in any way not have something come before the Committee.

I do think that these particular witnesses' connection to the actual handling of documents is so tangential that this particular document, which has an appropriate place in the proceedings, simply does not lend itself to the appropriate kind of further——

The CHAIRMAN. Examination?

Senator KERRY. —elucidation of fact from other people who may have handled it, who may know more about it or who have greater dealings with it.

The CHAIRMAN. All right.

Senator KERRY. So all I want to say is, Mr. Chairman, I think that this Committee has been somewhat handicapped by the Special Counsel's structure. There is a legitimate issue raised now with the House hearings, and I think you have done a very fair job of walking that line, too.

I just want the record to reflect that my questions are based on how I think the Committee can best get at this with respect to——

The CHAIRMAN. I appreciate those comments.

Senator KERRY. I do have questions for Ms. Thomases, but I think, fairly, the light is on and I do not want to go out of turn.

The CHAIRMAN. Let me ask, would the witnesses want to take a 5-minute break?

Ms. THOMASES. I am OK.

Mr. LINDSEY. I would like to, at some point.

The CHAIRMAN. Ms. Thomases, are you——

Ms. THOMASES. He would like to.

Mr. LINDSEY. At some point.

The CHAIRMAN. We can do it now, or we can turn to Senator Bond. Why don't we do Senator Bond's questioning, and then we will take a 5-minute break.

Senator BOND. Mr. Chairman, I was going to start my questions with Ms. Thomases, so if Mr. Lindsey would like to take a break I can begin with the questions for Ms. Thomases.

The CHAIRMAN. Very well.

Senator, do you want to proceed?

Mr. LINDSEY. Senator D'Amato, can I make one comment? This goes to what Senator Kerry said. I had not seen these forms before. I am looking at the financial disclosure form.

There is, under "liabilities," a \$50,000 liability, secured liability, under "notes payable to banks." It is possible the liability that was disclosed in the report, the April report to the FEC, is contained within that \$50,000.

Again, if I had had an opportunity to review these, I might be able to know that as a fact. But to leave the impression that it is not reflected on this at all based upon my testimony, having not had an opportunity to look at this document before, I think is misleading.

The CHAIRMAN. OK. We will note that and we will even look into that.

Senator Bond.

Senator BOND. Thank you very much, Mr. Chairman.

Good morning, Ms. Thomases. I know this has been a long morning, and we have gone around and around about a lot of things. I would like to review some of the matters that you have already testified to, to see if we can clarify a number of things.

I am taking these questions essentially from your depositions. I understand that you considered and still consider Mrs. Clinton a close friend?

Ms. THOMASES. Yes, I do.

Senator BOND. You were involved in Whitewater in the first quarter of the 1992 campaign in response to a press inquiry in which Mrs. Clinton asked you to get involved?

Ms. THOMASES. That is true.

The CHAIRMAN. You continued to represent the Clintons after the election with respect to Whitewater Development Corporation?

Ms. THOMASES. I continued to be interested in it. I don't know that I "continued to have an active role" in it because the primary role was turned over to Jim Lyons during the campaign.

Senator BOND. Thank you. In dealing with this, your primary contact was Mrs. Clinton rather than the President or the then-Governor. Is that correct?

Ms. THOMASES. The then-Governor was primarily on the road and, while I talked to him about scheduling matters, when it came to talking about Whitewater I usually, if I talked to anyone, it was to Hillary Clinton.

Senator BOND. All right. During the first part of 1993, you testified that in a limited way you discussed with Vince Foster Whitewater and the importance of clarifying what their tax obligations were.

Ms. THOMASES. He talked to me about his desire to clarify what their tax obligations were, and I endorsed that approach and felt that he ought to get expert tax advice in order to do that.

Senator BOND. Did you have any other discussions about Whitewater with Mr. Foster in that time period that you recall?

Ms. THOMASES. I cannot recollect specifically, but I did—yes. I talked to him about his sense of importance of figuring out how to dispose of the assets. But that was in December 1992, and not in 1993.

Senator BOND. You talked with Vince Foster fairly regularly, though?

Ms. THOMASES. Yes.

Senator BOND. Now, you stated you did not give any directions to Mr. Nussbaum about the handling of the documents, but you did have a number of conversations with Mr. Nussbaum on July 21 or 22 about Vince Foster's office?

Ms. THOMASES. I don't remember having "a number" of conversations with him. I really remember only one conversation on the 22nd. As I said, I may have had a subsequent conversation with him after the 22nd.

Senator BOND. From your deposition, page 70, the question concerned your conversation with Mr. Nussbaum on either the 21st or the 22nd. You said you didn't have a perfect time sequence, but you had a number of conversations with him in those 2 days. This information was provided in your deposition.

Ms. THOMASES. I remember a conversation before he handled the documents, and I remember a second conversation when he told me it was completed and that he had been satisfied with how it went. I cannot tell you for sure that that second conversation also took place on the 22nd.

Senator BOND. You have described a discussion with Bernie Nussbaum about having David Kendall take control of the personal papers of the Clintons. Can you expound upon this?

Ms. THOMASES. I corrected that in my deposition. I must have telescoped in my deposition. I went on at the later time to say that I do not think David Kendall was yet involved, and that it was just someone from Williams & Connelly.

Senator BOND. You did state that Bernie Nussbaum indicated to you that he had a responsibility to protect the President's papers?

Ms. THOMASES. Yes.

Senator SARBANES. Senator Bond, could you tell us what pages you are working from on the deposition?

Senator BOND. That question was from page 75. The previous question was from page 72.

The next question is from page 80. In the days subsequent to the review, Mr. Nussbaum told you that the review had been done in an orderly fashion. Is that correct?

Ms. THOMASES. That's correct.

Senator BOND. On page 95 you said that Mr. Nussbaum was venting about how to conduct the search. Is that an accurate characterization of Mr. Nussbaum's style of conversation?

Ms. THOMASES. Bernie and I have had a long-time relationship, and, yes, he was going on at a pretty intense, fast rate when he was talking to me.

Senator BOND. I have had the occasion to meet Mr. Nussbaum, and I think the characterization may be an appropriate one.

On page 109, you said you talked to Maggie on both dates, referring to the 21st and the 22nd?

Ms. THOMASES. That is correct.

Senator BOND. Now, Ms. Thomases, I am going to ask that they put up on these magic machines the documents that you furnished us. First, let's start out with ST-00-0001. Are these time records from your New York law office? The first one is "0001." It should be the very first page. Is that from your New York office?

Ms. THOMASES. Apparently it is.

Senator BOND. The first call identified on the left-hand side, 8:51, indicates that on July 22 there was a call at, as I interpret military time, 5:23 in the afternoon. Do you see that call?

Ms. THOMASES. Yes, I do.

Senator BOND. Do you have independent knowledge that that is a call that you made?

Ms. THOMASES. I remember talking to Maggie. I can't remember whether this was one of the specific calls I recollect.

Senator BOND. But let me ask you about that number, 2668, the first one. Was that Mr. Lindsey's number?

Ms. THOMASES. That's Mr. Lindsey's number.

Senator BOND. That occurred at 5:23. The call on the third line down, the one that begins 8:58, was made at 5:13 and that was to 6256?

Ms. THOMASES. Yes, that was.

Senator BOND. That would have been to Maggie Williams?

Ms. THOMASES. It may have been to Maggie Williams. It was the number to the First Lady's Office in the Old Executive Office

Building. That was the general office, and so far as I know still the general office number to that office.

Senator BOND. Was there anybody else in that office to whom you would have spoken 9 minutes and 30 seconds?

Ms. THOMASES. It is unlikely that there is anyone else I would have spoken to for that period of time, which is why I am willing to accept your characterization of it.

Senator BOND. We are trying to do the best we can. I have had a similar experience of trying to reconstruct things, and I appreciate your making that effort.

The next page, 0002, shows a call on July 22 at what would be 7:12 p.m. to 501-664-3192. Do you recall that residence number?

Ms. THOMASES. I believe that is the residence number of Ms. Rodham.

Senator BOND. In Arkansas?

Ms. THOMASES. In Arkansas.

Senator BOND. The next page, 0003, shows these calls that were made from the Washington office of Willkie Farr & Gallagher. We have displayed the unredacted portion. This chronology shows five calls, all of which occurred in the 11 a.m. timeframe. The first three calls were placed to the 6266 number; and the fourth and fifth calls were made to the 6797 number.

Would those have been your calls, and do you know to whose offices those calls would have been?

Ms. THOMASES. The 6266 number is to the First Lady's Office in the Old Executive Office Building.

Senator BOND. The 6797 number, is that the Chief of Staff, Mr. McLarty's office?

Ms. THOMASES. Yes, that is the Chief of Staff, Mr. McLarty's office.

Senator BOND. Having looked at those calls, does that help you recall the people to whom you might have spoken on those occasions?

Ms. THOMASES. I believe I talked to Maggie Williams the morning of the 22nd. I do not think I ever reached Mack McLarty on the phone, although I think this call to his office was part of my continuing effort, maybe, to speak to him.

Senator BOND. The final page of those documents, which I believe is 0006, is yet another Washington station report from Laurie O'Neill's station. This record was submitted to us by you.

This log shows that on July 22 at 10:40 a.m., there was also a call to 6797. Is that a call that you would have made?

Ms. THOMASES. Not from Laurie O'Neill's station. She is my Washington secretary.

Senator BOND. Is it possible that she placed the call for you?

Ms. THOMASES. That is possible.

Senator BOND. I mean, Ms. O'Neill would not be calling Mr. McLarty on her own, would she? She wouldn't be calling up and chatting with him?

Ms. THOMASES. If there was a message to be delivered, she might.

Senator BOND. So it went from your secretary to Mr. McLarty's office.

I am going to ask that we put up a chart that I think shows in summary these calls. I believe we have gone through these. It shows Ms. Thomases that there is a page to Mr. Nussbaum at 8:01. You have previously described the message slip to Ms. Williams.

Then, from the period 10:48 through the period 11:54, you spent most of that time, it appears, a very large part of that time, in calls to the Chief of Staff's Office, or the Office of the Chief of Staff to the First Lady. Is that correct?

Ms. THOMASES. When I called Maggie Williams through the 6266 number, which is not her direct line, and when I would call the Chief of Staff at his number, I would not necessarily reach them immediately. Sometimes they were on the phone; sometimes I would just hope to get through when I recall Mack McLarty's number.

I never actually remember speaking with Mack McLarty at his number during that period. With respect to Maggie, I do remember having two substantial conversations with Maggie on the 21st and the 22nd, but I usually called her on her direct line. The 6266 number is not her direct line.

I might have been trying to reach some of the other people, whether successfully or unsuccessfully, through that 6266 number.

Senator BOND. Now, Ms. Thomases, the reason that these calls are of interest is that we have learned from other testimony that Mr. Nussbaum either reached an agreement or had an understanding with Mr. Heymann and the Department of Justice about how the files in Mr. Foster's office were going to be handled. Then, when the team from the Department of Justice arrived about 10 a.m. that day—

The CHAIRMAN. Senator, we are well over the time. I think you are going to need some more time to develop this. So rather than curtailing you or trying to put it in, let's go to Senator Sarbanes and then we will come back to you.

Senator SARBANES. Senator Dodd.

Senator DODD. Thank you, Mr. Chairman.

Let me, if I can, first of all, as I understand it, Mr. Lindsey, your only involvement here with these papers involved the meeting that you attended on the morning, I gather, of the 22nd?

Mr. LINDSEY. That is correct.

Senator DODD. Is that correct?

Mr. LINDSEY. [Nods in the affirmative.]

Senator DODD. Who was at that meeting? It was yourself—

Mr. LINDSEY. Bernie Nussbaum, Jack Quinn, Bill Burton, and Steve Neuwirth indicates he was there although I did not recall that.

Senator DODD. The meeting, to your recollection, occurred for maybe around 40 or 45 minutes, maybe a little longer, I think I heard you state?

Mr. LINDSEY. It could be shorter, it could be longer. It is somewhere in the 30 to 45 minute range, yes.

Senator DODD. The subject of that meeting was fundamentally to talk about how the search of Vince Foster's office would be handled?

Mr. LINDSEY. With respect to the Park Police, yes.

Senator DODD. That was really the sum and substance of that meeting?

Mr. LINDSEY. Yes.

Senator DODD. I realize we are going back here now quite some time, but do you recall interruptions of that meeting, telephone calls, people being asked to step out of the room, and so forth?

Mr. LINDSEY. I don't recall the meeting well. In my deposition someone indicated, could it have been that at some point the meeting got moved from the Chief of Staff's Office to the Vice President's Office, which is right next door to it, and that triggered a recollection that that may have occurred.

So, yes, this was a meeting that people were in and out of, up and down, taking other calls and dealing with other matters, as well. It was not that we were sitting around a table or something. I was primarily using Mack's office just because it was right there on the first floor near where we all were.

Senator DODD. Ms. Thomases, again, looking at the call list of that time, this was roughly the time that meeting occurred. Is that right, Mr. Lindsey? What time did the meeting occur? Do you recall?

Mr. LINDSEY. My sense was somewhere in the 10 a.m. to 12 noon range.

Senator DODD. The implication here, Ms. Thomases, as you can see from what is trying to be developed, is that while this meeting is going on there appear to be several calls that are made to the Chief of Staff to the First Lady, and then to Mr. McLarty's office.

Now, Mr. Burton the other day was not clear, as I recall his testimony, in recalling. He remembered talking to you about arrangements to go to a funeral, but he could not recall whether or not it was the President's mother or, in fact, Vince Foster's funeral.

Do you recall talking to Mr. Burton about arrangements and whether it was manifest to be on the flight with the First Family or not? Do you have any recollection of that?

Ms. THOMASES. I don't—

Senator DODD. Could that have occurred in this particular—what I am getting at is obviously whether or not that would have been the subject of at least two of those calls.

Ms. THOMASES. I don't remember specifically talking to Bill Burton about this, but it is highly likely. When I had talked to the President on the evening of the 21st, he had been kind enough to offer me the opportunity to fly on his plane when he went to Little Rock for Vince Foster's funeral. I thought long and hard about that.

I was very fond of Vince, and I am a strong believer in going to the funerals of people I care a lot about. However, for me to stand in the heat, which I knew was what there was in Arkansas, in the summer was something that would not have been something that was good for my health. So I went back and forth and back and forth.

I am sure I probably told Bill Burton or Mack or Bruce when I called him the next day to tell the President that I had considered it but would not be accepting his generous offer of a seat on his plane.

Senator DODD. I don't want to get into a lengthy discussion of this, but could you just describe what sort of health problems you would have that would relate to that?

Ms. THOMASES. I have MS, and MS is a disease that is aggravated by intense heat, which is what the Arkansas sun is.

Senator DODD. So it is possible that on that morning those two calls, the 6797 calls, in fact, could have related to that particular subject matter, in light of your conversation with the President the evening before?

Ms. THOMASES. One of the things, but, as I said earlier, my primary goal probably was to reach out and speak to Mack and find out how he was doing.

Senator DODD. Let me ask you this very directly. At any point that morning did you make any phone calls to try to interrupt the meeting that was occurring, or to get a message into this meeting with Mr. McLarty and others to influence the outcome in some way of how these papers were going to be handled?

Ms. THOMASES. I had no idea that such a meeting was occurring, so no, I did not call. For whatever other reason I called, I did not call to interrupt or reach anybody in a meeting that I didn't know even existed.

Senator DODD. Other than the conversation you had on the 21st, and I am speaking about conversations here on the 22nd, one of the times there shows a call at 11:37. Again, I realize we are going back 2 years ago now in talking about 11:37 and 11:36. As I said, I do not know many of us on this side of the table who could tell you who they talked to yesterday at what time, but, nonetheless, the records are here. There is an 11-minute time.

Now, that number is to the main line, is it not? It is not uncommon for you to be placed on hold? It is a main line going in.

Do you recall specifically some lengthy conversation with Maggie Williams that morning about matters relating to Vince Foster's papers?

Ms. THOMASES. I have to tell you, I had no conversation with Maggie Williams about Vince Foster's papers. I can imagine myself talking to Maggie at length. Maggie was very upset by Vince's death, and I thought of her often on the 22nd. I could have called and talked to her. I could have called and talked to Evelyn to find out how she was doing. Any of those things could have caused me to call that 6266 number, but I wasn't calling Maggie Williams about any papers.

Senator DODD. Now, you had a conversation with Mr. Nussbaum regarding the handling of the papers. That conversation occurred as a result of Mr. Nussbaum raising the subject with you? Is that what your testimony was earlier?

Ms. THOMASES. Yes. I don't know with certainty. There is clearly a record that I paged Bernie on the morning of the 22nd, and I am sure that that is correct. I talked to him sometime that morning, but I can't remember exactly what time. I just don't know when he, in fact—I have to assume that he called me back and responded to my page.

Senator DODD. Had you talked to him on the 21st?

Ms. THOMASES. If I bumped into him, maybe, but I didn't have a memorable conversation with him on the 21st.

Senator DODD. This would have been, to your recollection, the first real conversation you would have had about Vince's death?

Ms. THOMASES. Yes.

Senator DODD. Was that the subject primarily of the conversation in your recollection?

Ms. THOMASES. That certainly was the beginning of the conversation. It was certainly what I focused on in the conversation.

Senator DODD. It was your recollection, further, that the subject matter of how the papers would be handled or the search conducted was a matter that Bernie raised with you?

Ms. THOMASES. Yes.

Senator DODD. Is it further your testimony that he described the options to you? Do you recall that? Or did he describe the decision that he had made as to how the search would be conducted? Do you remember that?

Ms. THOMASES. He told me he had made a decision and that he was in charge, that he was going to do it, and that he had taken great care into thinking through how it was going to be divided up; that other people were going to be there and the proper documents were going to be given to the proper person. It wasn't exactly a "discussion."

Senator DODD. I think we can appreciate that, having already had Bernie before us, that once he makes up his mind . . .

Let me ask you, Mr. Lindsey—I believe Mr. Ben-Veniste asked this of Ms. Thomases, but let me ask it of you as well. That is, regarding the papers of Vince Foster, whether or not you in any way concealed or destroyed any documents, or in any way interrupted or interfered with the law enforcement officials conducting a proper investigation of Vince Foster's death? Did you engage in any activities that could impinge upon the ability to properly handle that matter?

Mr. LINDSEY. No, sir, I did not.

Senator DODD. Mr. Chairman, I see the yellow light is on. I will stop.

The CHAIRMAN. Do you have anything further?

Senator DODD. That is fine for right now.

The CHAIRMAN. Senator Bond.

Senator BOND. Thank you very much, Mr. Chairman.

Ms. Thomases, I would like to pick up from where we left off. You stated you had two substantial conversations with Ms. Williams on the days in question. Can you tell us what those "substantial conversations" concerned?

Ms. THOMASES. I don't remember the specifics of either of those conversations, to tell you the truth. I remember talking to Maggie. I remember listening to Maggie. It was personally a very sad and troubling experience for her. She was personally fond of Vince. Maggie is a very religious person in a way that has always been inspiring to me. She talked about those kinds of feelings.

Senator BOND. Are you saying that she did not discuss matters involving files, lawyers, documents or investigations?

Ms. THOMASES. Not about matters involving files, or lawyers, or any investigation. It was not what was on either of our minds when we talked that day.

Senator BOND. Those conversations were only about personal feelings, emotions and religious issues?

Ms. THOMASES. The conversations on the 21st and the 22nd? The conversation on the 21st was about emotions, but she did mention in that initial conversation I had with her, as I recollect it, that she had gone into Vince's office and had seen Patsy Thomasson there, and Patsy was there to look for a note.

Senator BOND. All right. Thank you.

Ms. THOMASES. She did mention that to me.

Senator BOND. All right. Now, the reason we've asked the questions, and the reason that time period is important, we understood from Mr. Heymann that he believed he had struck an agreement with Mr. Nussbaum on the afternoon of July 21.

According to Mr. Heymann's testimony, he called Mr. Nussbaum at approximately 10:25 a.m., at which time representatives of the Department of Justice have been informed that they are not going to have access to the documents as initially discussed. Mr. Heymann calls Mr. Nussbaum to obtain an explanation for Mr. Nussbaum's backing out. According to Mr. Heymann, Mr. Nussbaum told him "I have to talk to some people."

We have now established that at 10:25 a.m., Mr. Nussbaum tells Mr. Heymann that he has to talk to some people.

Your telephone calls to the Chief of Staff's Office and the Chief of Staff to the First Lady's Office extend from 10:48 to 11:54 a.m. During that time, other witnesses testified that Mr. Nussbaum, Mr. Burton and Mr. Neuwirth met in Mr. McLarty's office.

Mr. McLarty was not present, but Mr. Lindsey and Mr. Quinn participated in at least a portion of the discussion. So if you had reached somebody in the Chief of Staff's Office, based on the other testimony, you would have had to have spoken to Mr. Nussbaum, Mr. Burton, Mr. Neuwirth or possibly Mr. Lindsey or Mr. Quinn.

Given that limited scope of people, does that refresh your recollection as to whom you might have spoken during that time?

Ms. THOMASES. It does not refresh my recollection. Often, when I call Mack McLarty's office, I talk to none of those people, or no one in the office, I talk to Patty Gheneen [phonetic], his secretary, who usually answered the phone.

Senator BOND. You talked with the Chief of Staff's Office from 10:48 to 10:51 a.m., from 11:11 to 11:14 a.m., and again from 11:16 to 11:17 a.m. You placed three calls in the space of a little over a half hour, just about a half hour, to the Chief of Staff's Office. Were you seeking information?

Ms. THOMASES. I was trying to reach Mack. I think that I called repeatedly in hopes that I would reach him. I didn't know about anybody else being in his office.

Senator BOND. In the latter part of the afternoon, I believe by the time you placed the 5:13 telephone call, you had returned to your New York office?

Ms. THOMASES. Yes.

Senator BOND. You called Maggie Williams' office, and then Mr. Lindsey's. Did you learn at that time that Mr. Nussbaum had implemented his procedure with respect to the review of the documents?

Ms. THOMASES. I did not learn that from either Maggie Williams' or from Bruce Lindsey's office.

Senator BOND. Did you know about the document review process at 5 p.m. on the afternoon of the 22nd?

Ms. THOMASES. I do not recollect knowing it at that time. I remember learning it from Bernie, and I didn't speak to Bernie in that period.

Senator BOND. So you would not have learned about the document review until later?

Ms. THOMASES. I think I would not have learned it until later.

Senator BOND. You did not know about the document review process when you made the 7:12 p.m. call to the Rodham/Arkansas residence?

Ms. THOMASES. I don't think I knew it, unless I talked to Bernie. I mean, I may have, but unless Bernie called me, I was out of my office in New York shortly after. In fact, looking at these, I realize I was probably late for a 5:30 meeting that I had that day in New York, which is why I hurried back to the city after my lunch in Washington that day, because I had a 5:30 meeting on another matter.

Senator BOND. In any of the conversations with Mr. Nussbaum about protecting the files and the records, did you discuss what he was to protect them from?

Ms. THOMASES. He talked to me about executive privilege and client relations and other things, but it was that kind of conversation.

Senator BOND. Did he tell you that the people who were inquiring were the Park Police, the FBI and the Department of Justice?

Ms. THOMASES. He never mentioned to me the Department of Justice. He mentioned the Park Police, and he told me the FBI was going to be there. I think if you look at my deposition, I did not recollect his talking about the Justice Department.

Senator BOND. As a lawyer, you did not discuss with him the scope of the privilege as to what should be privileged, what could be kept from the FBI or the Park Police?

Ms. THOMASES. No, I did not discuss the scope of the privilege. I would not have necessarily discussed the scope of the privilege with him, assuming that he had lots of people there who had more knowledge and more experience in this subject.

Senator BOND. Let me jump back in time. You have just discussed knowing that Vince Foster had been working on the Whitewater matter and other matters for the Clintons. You talked with him frequently. You also talked with Mrs. Clinton frequently. Did Mrs. Clinton know that Vince Foster was working on these matters, Whitewater, the tax obligations, and other things?

Ms. THOMASES. I don't know if Mrs. Clinton knew that Vince Foster was working on them. I was not the conduit between Vince Foster and Hillary Rodham Clinton.

Senator BOND. But you did discuss these matters with both of them, I assume?

Ms. THOMASES. Subsequent to the campaign, I didn't discuss these matters very often with Hillary Clinton.

Senator BOND. So you don't know whether she knew if Mr. Foster was working on these issues, picking up on the Whitewater matters that you had handled, or any of the other matters? You do

not know whether she had any knowledge of Mr. Foster's involvement?

Ms. THOMASES. I don't know what her knowledge was.

Senator BOND. At the time of his death, had Mrs. Clinton discussed with you any of the handling of any documents in Mr. Foster's office?

Ms. THOMASES. At the time of his death, she did not discuss with me the handling of any documents in Vince Foster's office.

Senator BOND. Did you volunteer to her any information on taking care of matters for Mr. Foster, handling Mr. Foster's files, or seeing that confidential information was protected?

Ms. THOMASES. No, I didn't. The truth is, Senator, I would have never felt it was appropriate to discuss those issues with her at that time.

Senator BOND. Thank you very much, Ms. Thomases. Thank you, Mr. Chairman.

OPENING COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Mr. President—I mean, Mr. Chairman. Excuse me, I must think I am on the Floor.

The CHAIRMAN. Senator Shelby.

Senator SHELBY. I was about to promote you to Presiding Officer of the Senate, which you are, Mr. Chairman. I know it is not my time to question, but it seems to me, Mr. Chairman, that a lot of things go back to Maggie Williams, just calling here and there.

As we go through witness after witness, it goes back to the central figure of Maggie Williams. Is it possible to reconsider bringing her back as a witness, Mr. Chairman?

The CHAIRMAN. Senator——

Senator SARBANES. We had that discussion.

The CHAIRMAN. —you were not here when we had that discussion. I have indicated that it was a concern that was raised by a number of Members, and I am going to look at that because there are some statements from other witnesses. I am going to ask both counsel to find out whether we can have an expedited procedure to see how we can accomplish that, or how we can get additional information.

There is a very real question as to where she is at the present time. She may be in China, but we are going to look at that. It is something that is of concern to me. So we will look at that and come to a determination later on.

Senator SHELBY. Thank you.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Senator Kerry, but I would just make this observation to Senator Shelby that in the course of the discussion we had earlier on that matter, I don't think——

Senator SHELBY. I was not here. I have been working on tomorrow's Whitewater.

Senator SARBANES. We also are going to revisit with the Independent Counsel his heretofore unwillingness to provide us with material which I think would be very helpful, and I am very frank to say I have difficulty understanding why we cannot get that cooperation.

Senator SHELBY. You have difficulty? I misunderstood, Senator Sarbanes. You had difficulty with what?

The CHAIRMAN. Understanding——

Senator SARBANES. Understanding why we cannot get that co-operation from the Independent Counsel.

The CHAIRMAN. One of the things—while I see more of our Members here on this side—we will pursue is that Mr. Chertoff and Mr. Ben-Veniste are trying to arrange with Mr. Starr or his office a meeting to discuss why certain information and materials that we have requested have not been made available and to look into other matters so that we can move this in a more expeditious manner and cover other areas. But we are going to do that together, and counsel are going to reach out today.

Senator Sarbanes.

Senator SARBANES. Senator Kerry.

Senator KERRY. Thank you, Mr. Chairman.

Ms. Thomases, what I would like to do, if I may, is try to paint a little bit of the picture that is being painted here by others, and by the record, and see if you can help us to understand the framework of it a little bit.

We have a search that took place at 1:15 in the afternoon, from 1:15 to 1:49. That is on the 22nd. On the 21st, you visited the President in the afternoon, and you had some conversations that were part of the initial contacts to the White House immediately upon learning of Mr. Foster's death.

I would like to just begin with the picture on the 22nd, and then ask you a couple of questions about it, if I can.

On the morning of the 22nd, there is an initial paging from you at 8:01 in the morning to Mr. Nussbaum. Then, at 9 a.m., there is a phone message left for Maggie Williams from you.

Then there are some other meetings that take place in the White House. We don't know the precise time, but Mr. Quinn was approached by Mack McLarty regarding the procedures of the search and referred to Mr. Nussbaum.

At 9:45 in the morning, you got a phone message for Bill Burton from Mack McLarty relative to the Jack Quinn conversation.

Then you have a discussion. We don't know the precise time, but you have a discussion with Mr. Nussbaum in which, according to both you and him, there's some discussion of the procedures relative to the search. He is discussing it, obviously. He is churning about it.

At 10 a.m. he meets with the Department of Justice attorneys, Mr. Margolis and Mr. Adams. So there is a discussion there.

At 10:30 Margolis and Adams call Mr. Heymann over at the Justice Department and tell him of their view of the plan for the search. Mr. Heymann leaves a message for Mr. Sloan at that point.

We don't know precisely at what time, but there's some more conversation going on in the White House between Sloan and Heymann.

At 10:30, Mr. Heymann is having a discussion with Mr. Nussbaum and someone. According to handwritten notes that we have over here, he is stating to Nussbaum that Nussbaum is 'messing it up,' and Heymann is going to call Margolis and Adams back to the DOJ.

Now, you are not party to any of this. This is just going on, but this is part of the mosaic within which, obviously, questions are being asked.

At a subsequent point that morning, Margolis and Adams are asked to go to the West Wing of the lobby and wait. They wait for an hour and a half for someone to come down.

Now, later in the morning, Mr. Neuwirth says that there is a meeting in McLarty's office. Mr. Lindsey and others have all testified to that meeting. We knew a meeting went on to discuss procedures.

Then there is the appearance, somewhere in the middle of all this, of a series of your phone calls. You have a 10:45 a.m. phone call, according to the Laurie O'Neill station, that lasts for 3 minutes. That does not mean that anybody got connected. You could have been put on hold the whole time. We don't know.

You then have an 11:04 a.m. call. Again, the first call was to the Office of the Chief of Staff to the President. The second call at 11:04 is to the Office of the Chief of Staff to the First Lady. That is a 6-minute call. My presumption is that somebody talked to somebody, but, again, I don't know if you hold for 6 minutes or not.

Then, at 11:11 a.m., 7 minutes later, you called the Chief of Staff to the President again. That is a 3-minute connection. Again, we don't know if you talked to anybody. It certainly was not a long conversation.

Five minutes later there is a 1-minute connection, again to the Office of the Chief of Staff to the President.

Then, at 11:37 a.m., there is an 11-minute conversation between yourself and you have acknowledged the possibility that that could have been with Maggie Williams at that point in time. The call was placed to her office.

At 11:50 a.m. there is a 4-minute connection between you and somebody in the Office of the Chief of Staff to the First Lady again.

Now, that is the record of these phone calls. Whether they are all connected or not, we don't know, and we certainly want to try to push your recollection today to see if you can remember whether or not they are connected, but the picture is that in the midst of these discussions and meetings, et cetera, there are these phone calls.

Then we go to Mr. Nussbaum's deposition. I want to read to you from page 90 of his deposition. He was asked the question:

Question: What was the conversation on the 22nd with Susan Thomases?

His answer:

Answer: The conversation on the 22nd: That she asked me what was going on with respect to what was going on with respect to the investigation or the examination, the examination of Mr. Foster's office. She had heard there were discussions in the White House with respect to this issue, which there were, on the 22nd, which you'll get to I presume.

Was everything OK? What was going on? And I said, I'm having some discussions with people.

Do you remember that that way?

Ms. THOMASES. Not really that way. I mean, I remember asking Bernie a variation of how are you doing. I don't remember raising with him the issue of any investigation, because I really didn't know about any investigation until Bernie raised it.

Senator KERRY. But can you help us to understand the sequence of time here, and the series of phone calls in the context of this? Do you understand at least why a legitimate question is asked?

Ms. THOMASES. I see why people can be asking questions, but I have to tell you that I was not asking questions as a part of this. I was really just trying to reach out to Bernie and go on about my own business. I mean, I had no particular role or interest in this process.

Senator KERRY. On page 93, a couple of pages later, Ms. Thomases, he is asked the question——

Ms. THOMASES. Page 93 of what?

Senator KERRY. Excuse me. Page 93 of Mr. Nussbaum's deposition.

Ms. THOMASES. I don't have it.

Senator KERRY. Not yours.

Ms. THOMASES. I don't have it.

Senator KERRY. Let me just share it with you.

Ms. THOMASES. It may have been shared with me at some point.

Senator KERRY. If I don't, someone else will. I just want to ask this, if I can.

The question asked to Mr. Nussbaum by counsel was:

Question: Did she say that anybody was concerned about giving law enforcement people unfettered access to the documents?

Mr. Nussbaum's answer was:

Answer: She said people are concerned about whether I was using the correct procedure or whether the procedure was—people were concerned or disagreeing, something like that—whether a correct procedure was being followed, whether I was using the correct procedure, whether it was proper to give people access to the office at all, something like that.

Do you recall expressing to Mr. Nussbaum either a generic or a specific kind of concern of some sort?

Ms. THOMASES. I had no concern.

Senator KERRY. But had you heard of that from other people? Had you heard of this discussion, or of any sort of issue within the White House?

Ms. THOMASES. I had not heard about any issue in the White House at the time that I first talked to Bernie.

Senator KERRY. Did you express to him in any of the previous conversations—I take it you talked to Maggie Williams previously, and you had previously had some conversation regarding this? Is that fair, or not?

Ms. THOMASES. I don't think I had a conversation with Maggie Williams about any documents.

Senator KERRY. Did you have a subsequent conversation with Bernie or somebody that would have placed this in a time sequence that is different? Did you have any conversation regarding issues of the access to the office, or the nature of the search proceeding?

Ms. THOMASES. No. The only person I had that conversation with was Bernie, and he was feeling very intense, and I have no recollection of any conversations I had with anyone else at the White House about documents except for, as I stated earlier today, my brief interchange with Maggie which I think was the night before about the fact that she had seen Patsy Thomasson in Vince's office,

and Patsy had not found anything that could be called a "suicide note."

Senator KERRY. Did you, in your conversation with Mr. Nussbaum, simply listen to him, or did you express some views or observations at all about the search process?

Ms. THOMASES. I expressed no observations. I just said it sounds good to me, which it did. It sounded like he, in fact, had thought it through very, very carefully, which was his way.

Senator KERRY. So his memory as to the question of your asking him what was going on with respect to it, or your expression of concern about people using the correct procedure, his memory as to that is either incorrect or simply wrong?

Ms. THOMASES. Let me tell you, I don't want to speculate about that because I don't know for sure. I could have said to Bernie, in addition to "how are you doing?," when he seemed upset, "are you concerned?" I mean, I don't know that, but I did not have any concern when I talked to him except how he was doing, how he was feeling.

Senator KERRY. My time is up, so I yield.

The CHAIRMAN. Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Ms. Thomases, I would like to follow up on Mr. Chertoff's questions, the ones that he asked you just as you were ending. When you were in Washington on the night of the 21st, did you stay at the White House?

Ms. THOMASES. No, I did not stay at the White House.

Senator FAIRCLOTH. You were not there? All right. Humph! I read this, and these are statements from White House people, but they are so contradictory to the way you express yourself now as to your role.

I want to read to you what some people at the White House were saying about you before you became the "little lost lamb" in your conversations.

Ms. Thomases, you are here today because of your involvement in the events surrounding the handling of the papers at the White House.

Now, here are some passages that people from the White House said about you.

James Carvel says: "Thomases has the juice," a reference to her bond with Bill and Hillary, "especially with Hillary."

Another, "It's not that she has the juice; she is the juice. She is the juicer."

Finally, this article says, "She's Hillary's blunt instrument of enforcement."

Now, this was written almost 2 years ago, knowing the perception, the reality that people believe you spoke for the First Lady.

Then, we go back to the calls to Bernie Nussbaum, many, many—I mean, call, call, call, call, call, call, call—and you were discussing the weather? His general feelings? Politeness? Niceness? All of a sudden you spill the juice, according to you. You no longer have it? Is that right?

Ms. THOMASES. Senator, the press you are referring to, I think, really refers to things that happened during the campaign.

Senator FAIRCLOTH. Let me go on to something else. You talked to him on the morning of the 22nd?

Ms. THOMASES. Yes, I did.

Senator FAIRCLOTH. Did you discuss the impending review of documents in Foster's office?

Ms. THOMASES. He discussed the impending review.

Senator FAIRCLOTH. You just politely said, "Sounds good to me, Bernie. I don't really have many strong opinions; I never have had; and if you think it's good, I think it's wonderful"?

Ms. THOMASES. I have strong opinions, Senator—

Senator FAIRCLOTH. Why didn't you express them?

Ms. THOMASES. —about—

Senator FAIRCLOTH. You always have before.

Ms. THOMASES. Senator, I have strong feelings, but I didn't have strong feelings about this subject.

Senator FAIRCLOTH. Did he tell you he was going to sort the documents into several categories?

Ms. THOMASES. Yes, he did.

Senator FAIRCLOTH. What did you say to that? Wonderful?

Ms. THOMASES. I don't know that I commented on it.

Senator FAIRCLOTH. Did Mr. Nussbaum tell you who else would be part of the search, like law enforcement officers?

Ms. THOMASES. What I remember is that he told me law enforcement officers and Park Police would be there, and that there was going to be a representative for Lisa Foster, and a representative from the Williams & Connelly law firm.

Senator FAIRCLOTH. You wished him good luck with the search?

Ms. THOMASES. Yes, I did.

Senator FAIRCLOTH. You asked him how the First Lady was doing?

Ms. THOMASES. I did not ask him how the First Lady was doing.

Senator FAIRCLOTH. OK. But with your reputation as an outspoken, strong lady, do you expect this Committee to believe you just sat there and listened to Mr. Nussbaum; that you did not offer your opinion or relay the First Lady's opinion on the search of Vince Foster's office in any way? Is that right?

Ms. THOMASES. That's right. I didn't know the First Lady's opinion.

Senator FAIRCLOTH. All right. You called Maggie Williams at 12:15 on the night after Mr. Foster's death. She had already had three calls from the First Lady. I think you had already talked to the First Lady that night. What did you talk to Maggie Williams about?

Ms. THOMASES. I didn't reach Maggie Williams that first night.

Senator FAIRCLOTH. You couldn't get her. What did you want to talk to her about?

Ms. THOMASES. I wanted to find out how she was doing and how she was feeling. She and Vince had become very close and, as her friend, I was concerned that she would be upset.

Senator FAIRCLOTH. Maggie Williams testified that Hillary Clinton called her three times, including a call prior to Maggie Wil-

liams going to the White House, and a call immediately after Maggie Williams returns from the White House.

As you know, a Secret Service agent has testified he saw Maggie Williams removing documents from Mr. Foster's office that night.

Ms. Thomases, did Hillary Clinton ever in any way discuss Maggie Williams, or documents, or removing them, or in any way discuss sending Maggie Williams to the White House that night, or what she talked to Maggie Williams about in those three straight calls? Did you ever discuss with the First Lady why she spent three calls on probably the most traumatic day of her life to one woman, Maggie Williams?

The Secret Service has testified that they saw Maggie Williams bring in a stack of documents out of the office. Has the First Lady ever discussed that with you in any way?

Ms. THOMASES. The First Lady has never discussed that with me in any way. The First Lady never discussed any documents with me on the night of Vince Foster's death, or in the days immediately thereafter.

Senator FAIRCLOTH. Did you discuss your appearance here today with Hillary Clinton?

Ms. THOMASES. I did not discuss my appearance here today with Hillary Clinton.

Senator FAIRCLOTH. Ms. Thomases, with respect to your relationship with the Clintons, would you tell me when was the first time you represented the Clintons either together or separately in your capacity as an attorney?

Ms. THOMASES. The first time I had any professional dealings, when they had asked for my advice, was when Hillary Clinton worked at the Rose Law Firm.

Senator FAIRCLOTH. Would you tell us what matters you discussed with the Clintons? What was the advice? What was it that you needed their advice on?

Ms. THOMASES. As I said earlier today, sir, I gave Hillary Clinton and some of the other people at the Rose Law Firm some accounting advice as to how they could set up their books so that the time of those revenues from those persons who were working on State business could be segregated so that Hillary Clinton's earnings would in no way reflect the earnings of the firm on their State business.

Senator FAIRCLOTH. How long have you represented the Clintons on Whitewater?

Ms. THOMASES. Since the first quarter of 1992.

Senator FAIRCLOTH. Were you paid?

Ms. THOMASES. No, I was not paid.

Senator FAIRCLOTH. What were your duties in representing the Clintons as an attorney on Whitewater issues?

Senator DODD. Mr. Chairman, again, I question the scope of the area here. How does this relate to the handling of the documents?

The CHAIRMAN. I think it goes to the entire—

Senator FAIRCLOTH. Mr. Chairman—

The CHAIRMAN. Yes.

Senator FAIRCLOTH. —how can that not relate to the documents? We are talking about Whitewater documents. If we can't ask her when she represented the Clintons—

Senator DODD. What does how much she got paid have to do with the——

Senator FAIRCLOTH. That gets right back to how intensive her work was on the documents.

The CHAIRMAN. Senator, I am going to let Senator Faircloth continue.

Senator FAIRCLOTH. What were your duties in representing the Clintons as their attorney on the issues of Whitewater? What did you do? If you don't mind, be pretty specific.

Ms. THOMASES. My initial duty was to help to gather the relevant documents on Whitewater to prepare myself for discussing the transaction with a reporter who was doing a news story on the transaction.

Senator FAIRCLOTH. So you just prepared for that.

Mr. Lindsey——

Mr. LINDSEY. Yes, sir.

Senator FAIRCLOTH. —David Watkins testified last week that Federal Judge Richard Arnold called him to recommend Patsy Thomasson, who had worked 10 years for Dan Lasater, a convicted cocaine dealer, for a job in the White House. Mr. Watkins then testified that he called you to get your approval in hiring her as his Deputy. He also stated that you might have raised the question of hiring her with the President.

Did you discuss Ms. Thomasson's hiring with President Clinton?

Mr. LINDSEY. I don't recall.

Senator FAIRCLOTH. You don't recall?

Mr. LINDSEY. I don't recall.

Senator FAIRCLOTH. Do you know who might recall, if you don't?

Mr. LINDSEY. Senator, at this point I was Director of Presidential Personnel. I discussed a lot of hirings of a lot of people with the President.

I don't recall discussing Patsy Thomasson's hiring with him. I don't have a direct memory of learning it from David Watkins, but if he said I did, that he told me, then I assume he did. I just don't recall.

Senator FAIRCLOTH. It would seem terribly strange to me that they would bring into the White House a lady who spent 10 years with a man who was a notorious and convicted drug dealer, who had his power of attorney. If she had been from New York and worked for a convicted drug dealer for 10 years and had his power of attorney, would you have just blatantly hired her with never asking a question? Is that the type of people you were looking for?

Senator KERRY. Mr. Chairman, the Senate once had a series of hearings where the question was asked:

Are you now or have you ever been a member of a certain Party?

Guilt by association was something that our Founding Fathers tried to do away with with the Constitution and the Bill of Rights that we give people.

We have been through this now with most witnesses. I thought Mack McLarty gave a very eloquent statement about Patsy Thomasson's qualifications and how she got hired. I think to keep coming back at it with this unfortunate, tragic drug dealer association is wrong. People are not accountable for every person they come

across in their life. If so, some of us as Members of the Senate might not be so happy.

The CHAIRMAN. I can attest to that, Senator.

I understand how that can play out and I think we have to be sensitive, obviously, but when the Senator raises the question, given the fact that there was almost a 1-year delay, quite a period of time, and, as a matter of fact, I raised the issue, a year, or a year-and-a-half ago, as it relates to the clearance question with Ms. Thomasson, directly when I was a Member of the Subcommittee on Treasury-Postal, it is troubling as it relates to why that was held up.

Was it just paperwork? It certainly raises questions. I think the Senator has raised it before, and he goes back to it because he obviously feels very strongly that there is a very real question as it relates to her being placed in this position, and then, of course, her not having the security clearance, et cetera. So I think it goes to that, and he wants to find out how she was hired and received this position, and Mr. Lindsey was the Director of Personnel.

I am going to say to my friend and colleague, I think you have made the point. He is not going to give you more than he has, as a practical matter. He is going to say that she was hired, but that he did not, as he has testified, speak to the President about this.

There is no doubt that Patsy Thomasson was well known, having been, I think—and this was in the record—the former Director—

Mr. LINDSEY. Executive Director of the Democratic Party.

The CHAIRMAN. —of the Democratic Party. So let—

Senator FAIRCLOTH. Let me ask, Mr. Chairman—

Senator DODD. Mr. Chairman, can I also point out, in fairness to Patsy Thomasson, that she had not even applied for a clearance. The suggestion has been lingering around that there was some holdup on her security clearance. In fact, as I recall earlier evidence, there was no application that had been made at all. So the notion that somehow this was being held up—

The CHAIRMAN. I think one of the things we should do for the record—

Senator DODD. Let me, just in fairness to her, because this is a—

The CHAIRMAN. Let me ask—

Senator FAIRCLOTH. We'll call her back, if you want to, and let her explain it again.

Mr. Chairman, let me ask questions.

The CHAIRMAN. All right. Conclude.

Senator FAIRCLOTH. Do you know Judge Arnold?

Senator SARBANES. Mr. Chairman, on this question of calling people back—

The CHAIRMAN. OK, look. Let us proceed. Let the Senator finish his line of questioning. Go ahead, Senator.

Senator FAIRCLOTH. Do you know Judge Arnold?

Mr. LINDSEY. Yes, I do.

Senator FAIRCLOTH. Is he a close friend of the President's?

Mr. LINDSEY. Yes.

Senator FAIRCLOTH. Were you called by Judge Arnold about Ms. Thomasson?

Mr. LINDSEY. I don't believe so.

Senator FAIRCLOTH. Wait a minute. You don't believe so?

Mr. LINDSEY. Again, I have no recollection, no knowledge, no remembrance of Judge Arnold ever calling me about Patsy Thomasson.

Senator FAIRCLOTH. Do you know if Judge Arnold called anyone else other than Watkins about Patsy Thomasson?

Mr. LINDSEY. I didn't know he called David Watkins until David Watkins testified to that before this Committee.

Senator FAIRCLOTH. All right, Mr. Chairman, my time is up.

The CHAIRMAN. Thank you, Senator.

We could take another round. I would prefer to do that because, otherwise, we are just going to be here later. Then, after the next Senator goes, we will break and come back at 2:05. So why don't we keep it going.

Senator SARBANES. I yield to Senator Murray.

OPENING COMMENTS OF SENATOR PATTY MURRAY

Senator MURRAY. Mr. Chairman, I appreciate that.

I did want to ask Ms. Thomases some questions, and she has taken a break. What would be your pleasure on that?

The CHAIRMAN. Pardon me? Did you want to wait for Ms. Thomases to return?

We could hold for a minute. I see, Senator, you have been very patient, but, Senator Simon, if you have any questions that you would like to direct to Mr. Lindsey?

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Let me first, Mr. Chairman, if I may, comment about Senator Faircloth just mentioning bringing somebody back, and Senator Shelby, earlier, mentioning bringing Maggie Williams back.

The CHAIRMAN. In fairness, I have to say that a number of Senators including myself have raised that. There are some, I think, contradictions and we've asked counsel whether they can find an expedited manner to deal with this.

Senator SIMON. Let me just make this point: If there is substantial reason for doing so, I am not opposed to it—

The CHAIRMAN. Certainly.

Senator SIMON. —but I have to add, in the case of Maggie Williams, for example, she has testified she owes \$142,000 now in lawyers' fees. We are making a huge imposition on a lot of people here. She is not a person of wealth. If there is substantial reason, fine. If there is not, I think we ought to be sensitive about that.

Senator SARBANES. I say to the Senator, when we worked out the procedures for these hearings amongst counsel and amongst ourselves, it was with the understanding that we would not keep calling people back.

The CHAIRMAN. It is my intent to keep to that, Senator Sarbanes, but there may be occasions, and we will review the record—

Senator SARBANES. Mr. Chairman, I just put this as an aside, I know they had a big hearing over in the House yesterday and they got a lot of coverage, and I hope it would not drive Members over

on this side to feel that somehow we have to bring everybody back in order to get back in the same coverage league.

The CHAIRMAN. I don't think so——

Senator SARBANES. I perceive here today this kind of impetus somehow that is coming from somewhere, and I have been searching in my own mind the cause of it. I cannot find any but what I have just stated. I hope that is not the case.

The CHAIRMAN. I do not believe that is the case. I think——

Senator FAIRCLOTH. Mr. Chairman——

The CHAIRMAN. —we will let counsel look at the record, because I think there are six to seven witnesses who have given statements that at least give a different point of view. That is being charitable. In some cases, they are outright contradictory. So let's look at that. I think it is a legitimate request, and we will review it.

Senator FAIRCLOTH. But, Mr. Chairman——

The CHAIRMAN. Yes.

Senator FAIRCLOTH. —there has been at least eight or ten totally contradictory testimonies to Maggie Williams. Do we just let it float out that she didn't tell us that these other eight or ten who have contradicted her are lying, or that she was lying? Do we just let it float? Wouldn't we be better off to expand our witness list into some people that might have more knowledge?

Senator SIMON. Mr. Chairman.

Senator SARBANES. Mr. Chairman, that is very unfair. Witnesses can have differing recollections. That does not lead to the conclusion that one or the other is lying. It is terribly unfair, I think, to characterize a conflict in testimony or a difference in recollection in that manner.

Senator SIMON. If I may just——

Senator FAIRCLOTH. Mr. Chairman——

The CHAIRMAN. I believe that I——

Senator DODD. She is the only witness that took two lie detector tests.

The CHAIRMAN. I believe that if you——

Senator DODD. Maybe every witness ought to take a lie detector test.

The CHAIRMAN. I believe if you examine my statement, I said that there are a number of statements that are at variance and that give different recollections, and I would hope that our counsel would review the record and we will make a determination whether this is necessary.

Senator SIMON. Mr. Chairman, if I may just add, before I yield to my colleague from Washington——

The CHAIRMAN. Senator Simon.

Senator SIMON. —we are asking people what happened at 11:42 a.m. on July 22——

Senator SARBANES. 1993.

Senator SIMON. —1993. That there will be some contradiction is just normal.

Now, if you and the two counsels review this and you find really substantial contradiction where there is reasonably someone not

telling us the truth, that is one thing. But for people to have differing recollections of what happened is perfectly normal.

The CHAIRMAN. Senator Simon, you make a good point, and we will take that into consideration. That will be the measure by which we examine this.

I am going to ask counsel. We have looked at this, but I have to tell you I think we owe it to ourselves and to Maggie Williams to review this, and we will do that.

Senator FAIRCLOTH. Mr. Chairman, may I——

Senator SARBANES. Mr. Chairman, I also want to note that there are some witnesses who, in effect, sustain the recollection of Maggie Williams. Others differed with it. But yet we also have people who have come here before us who have sustained it.

I do not quite know where this impetus to just redo the hearings all over again comes from, except maybe the fact that we are now in apparently a competitive situation with the House.

The CHAIRMAN. I am going to recognize the Senator, and then we will go to Senator Murray and give her her full 10 minutes.

Yes.

Senator FAIRCLOTH. My——

The CHAIRMAN. Excuse me. Take the clock off, and when Senator Murray starts, she gets her full 10 minutes, please.

Yes, sir.

Senator FAIRCLOTH. Senator Simon, we talk about different recollections, but if you had three telephone calls——

The CHAIRMAN. Senator Faircloth, do me a favor. I really do not want to have our Senators addressing each other.

Senator FAIRCLOTH. Oh, I am sorry.

The CHAIRMAN. So if you have an observation——

Senator FAIRCLOTH. I would like to make an observation.

The CHAIRMAN. OK.

Senator FAIRCLOTH. I cannot imagine three telephone calls from the First Lady in one evening, and having no recollection of what they were about.

Now, I have been told that the phone calls from the airplanes that carry the President and the First Lady are taped, are recorded. We hear that from the Air Force.

Is it possible, if that is true, that the White House would like to make a copy of these records available to us, when Mrs. Clinton was called on the plane, who called, and why?

I do not know this. We were called by several people from the Air Force saying any time the President or Mrs. Clinton are on a plane, that these calls are recorded.

Senator KERRY. Mr. Chairman.

The CHAIRMAN. Yes, Senator Kerry. I don't know this to be the case——

Senator FAIRCLOTH. I don't, either. Let's find out.

The CHAIRMAN. OK——

Senator KERRY. Mr. Chairman, I just wanted to say I don't know if that is true on Air Force One, but the First Lady was not on Air Force One. She was on one of the smaller planes.

Senator FAIRCLOTH. This is what we were told. Any plane that the President——

The CHAIRMAN. Let me make a request of our counsel——

Senator SARBANES. Who told you that?

The CHAIRMAN. Can I make a request——

Senator SARBANES. Who told you that?

The CHAIRMAN. Now, look——

Senator KERRY. Elvis?

The CHAIRMAN. —that's exactly why——

Senator FAIRCLOTH. The Colonel.

The CHAIRMAN. That's exactly why I asked Senator Faircloth not to engage Senator Simon directly, because we are going to get this. This is just the beginning and we have a long way to go.

Senator DODD. We are almost through, Mr. Chairman. We have one more day here.

The CHAIRMAN. Let me say this to you. We will ask counsel to find out whether there are records which are routinely kept of conversations that are made. I can't believe that to be the case.

I cannot believe it to be the case, but if, indeed, that the conversations are recorded, then we will decide what to do thereafter.

So we will ask counsel to ascertain from the White House if that is the case.

Senator FAIRCLOTH. If it is not recorded, try to ascertain if there are records of the calls.

The CHAIRMAN. Now, if I might, Senator Murray, you have been very patient.

Senator MURRAY. Thank you, Mr. Chairman.

We have been going through day by day for the past 3 weeks the minutia of many, many conversations that occurred within a very short timeframe. I wanted you, Ms. Thomases, to take us back for a minute to 2 years ago to the overall feeling that occurred.

I have never had anybody close to me commit suicide. I would like you to describe for us just generally looking back the aura of those 3 days, how it felt, and what people were thinking.

Ms. THOMASES. Thank you, Senator Murray.

As I said in my opening statement, it was a very difficult time for me personally. I had known Vince a long time, almost as long as I'd known Hillary. For Maggie Williams it was particularly devastating because she had worked with him on a regular basis, and they had developed a very strong bond. That was very troubling, which was something that the First Lady, in her own grief, recognized and asked me to please be sure to spend some time giving Maggie some solace, and touching base with her to see how she was doing.

For myself, I did that. I talked to Maggie. I talked to other people in the White House even while I had to get on with what, in my life, was a very, very busy period having nothing to do with the White House and having nothing to do with Vince Foster's death. I thank you for asking.

Senator MURRAY. Did you at any time think that you were going to have to remember every single thing you did in those 3 days and recount it 2 years later?

Ms. THOMASES. I never thought that I would have to remember everything and have to recount it, and since I'm at the age in my life when I have to remember things, I like to write them down. It would have been nice to have had some notice so that I, in fact, could have made more meaningful notes of what happened at that time if I was going to have to recall it.

Senator MURRAY. We've focused a lot on a lot of conversations and 3-minute holds on telephones and whatever else had occurred. Obviously, a lot of people were talking to a lot of people, as I would assume would happen in a case where there's a lot of grief involved and you just want to reach out and touch someone real.

Do you think that we should think it's out of the ordinary for you or anyone to talk with people numerous times at a time when you're grieving?

Ms. THOMASES. No, thank you. That's why in my opening statement I said that we were all calling each other and touching base to see how everyone was doing, and as I said today, it explains in part why I put three calls into Mack McLarty's office even though I, in fact, never got to speak with him because I wanted Mack to know that I was thinking of him. I would have liked to have talked to Mack during those first days because I know that the loss of Vince, who was both his close friend and his lawyer, was particularly difficult for Mack among us.

Senator MURRAY. So, in essence, you were reaching out to people out of compassion?

Ms. THOMASES. Out of compassion and also out of my own need to touch base and be in touch with people who knew and cared and appreciated my grief.

Senator MURRAY. You did talk to a number of people. You knew them all well: Maggie Williams, Bernie Nussbaum, the President and the First Lady. These were all people who were close to you, friends, people that you would reach out to when something like this occurred?

Ms. THOMASES. Yes, Senator, they were those kinds of friends.

Senator MURRAY. When you talked to Maggie Williams, she told you that she was in Vince Foster's office on the night of the 20th. Did she tell you what she was trying to do, or was that the focus of the conversation?

Ms. THOMASES. She didn't tell me how she happened to have been there except she talked about her particular affection for the couch. I mean, it's funny how it sticks in my mind, the couch that was in Vince Foster's office and how much time she had spent on that particular couch.

Then she said that Patsy Thomasson—and I have to say Thomasson very deliberately because my name, which is Thomases, in the course of these hearings has been repeatedly mixed up with Thomasson—Patsy Thomasson had been in the office, that she was surprised that she was there when she went to the office, and that Patsy had been looking for a note but had found no note, which was the only time in that period that I remember anybody talking about a note.

Senator MURRAY. So you distinctly remember a couch, and that, frankly, doesn't surprise me. In times of grieving it's the things like

that that reach out and touch you. You don't remember any calls before or discussions of destroying documents or finding documents at all at that time?

Ms. THOMASES. I remember no discussions about documents with either Mrs. Clinton or Maggie Williams. The only person who discussed documents with me during that period was Bernie Nussbaum.

Senator MURRAY. What was Bernie Nussbaum's state of mind when you talked with him?

Ms. THOMASES. He was revved up. He obviously was very involved in what he was doing. He initially, when I asked him how he was doing, how he was feeling, talked about Vince and the last time he had seen Vince and relayed that story to me then moved very quickly into telling me don't worry; I'm in charge; you know I've got this whole thing under control. So that's how he was. He was very intense, which is understandable, by the way. I felt that it was quite understandable.

Senator MURRAY. Because he was so closely involved?

Ms. THOMASES. Because he was closely involved with Vince. He had become very personally fond of Vince and, obviously, it seemed to me he felt under some pressure at that time.

Senator MURRAY. Do you feel that he was coming from a focus on trying to deal with the tragic scene, or was he coming from a focus on destroying documents or removing or hiding sensitive documents?

Ms. THOMASES. I had no sense of him trying to destroy or remove anything. I just had a sense of his trying to order everything and to divide the documents appropriately making sure that the right documents were protected and that the documents that were private documents reached the right people.

Senator MURRAY. You know the President and the First Lady very well?

Ms. THOMASES. Yes, I do.

Senator MURRAY. What was their state of mind when they first discussed this with you?

Ms. THOMASES. As I said in my opening statement, neither the President nor the First Lady mentioned anything about documents in my conversations with them during the period from the 20th to the 22nd.

Senator MURRAY. Would you say their focus was on caring for people around them at that time, or was their focus on worrying about what was in someone's office?

Ms. THOMASES. It was not about worrying what was in someone's office, and it was caring about the people around them, but also actually experiencing some grief themselves.

Senator MURRAY. Thank you. I'll yield to counsel.

Mr. BEN-VENISTE. Thank you, Senator Murray.

Ms. THOMASES. Thank you, Senator.

Mr. BEN-VENISTE. Mr. Chairman, I would like to take a brief opportunity at this time because I've been sitting here and listening carefully to the testimony over these 4 weeks that we've had these hearings. The suggestion is made today that Ms. Williams had

three conversations with the First Lady on the night of the 20th and couldn't remember anything about them.

I sat through testimony where Ms. Williams described those conversations in detail, as she did in her deposition at pages 24 and 25, Mr. Chairman. She said those conversations were, first, a call from an airplane where the First Lady advised her that she was going to land soon and wanted her to be available. She then called back from Little Rock.

According to Ms. Williams' testimony at page 24 of her deposition, she said, "The first call was on the plane. It must have come through Signal because I thought she said you're at home, and she said are you going to be there," and so forth. Then, in the conversation after she landed, she said, "I want you to sit down," and Ms. Williams testifies, "I thought that was bizarre. And then she told me that Vince was dead. And I don't know if she told me if he killed himself or he was dead. I don't know what she told me past that."

So this was the subject of not only deposition testimony but testimony here before us. I would also like to talk about the fact that we had an agreement that witnesses would not be recalled and that, in connection with scheduling Ms. Williams' testimony here before us, in all fairness to Ms. Williams, she had a long-standing trip planned to go to China. I recall distinctly that we tried our best to accommodate her. We couldn't exactly, but that was well known, and the suggestion that now we should call her back as though she's around the corner strikes me as not exactly fair.

With respect to Ms. Thomasson, I sat here and listened to the testimony, Mr. Chairman, that the delay in her White House pass was due to the fact that the paperwork was delayed, that there was no substantive concern with respect to her employment or any other factor that held up her clearance. I would like to comment because it was an important factor in my growing up—although I was only a child at the time that the hearings that Senator Kerry alluded to took place—but they made a strong impression on me, as I'm sure they did on most people.

The CHAIRMAN. Counselor, I really believe now that you're approaching the bounds that take us—I have attempted and do attempt to give everybody an opportunity to set forth their position, their right to raise objections, their right to make their observations. I think I've attempted, and even Senator Kerry has indicated, to the best of my ability to protect witnesses and in some cases even to explain background because it may be that they're unaware of the testimony of others. I've done that without regard to who they are or what their testimony may be. I don't believe that it is fair to this Committee in its efforts to attempt to bring up those kinds of images. That's wrong. So I just make that observation.

Mr. BEN-VENISTE. Mr. Chairman, perhaps this is my time, if you will permit me to do so, to make this observation with respect to Ms. Thomasson, who has been, I think, unfairly branded with some type of guilt by association because her employer was convicted of a crime that no one suggests she had any involvement in. Perhaps we ought to just sit back and remind ourselves once again of Vin-

cent Foster's last line, that ruining people is considered sport in Washington. We ought to take a deep breath and try to keep that in mind.

The CHAIRMAN. I think that's an important observation, and I think we should all understand that and attempt to apply that. We're going to take a break until 2:15. Having said that, I'm going to put two brief questions to the witness.

Ms. THOMASES, I don't know if you have a copy in front of you, but I'm looking at the timesheet that you have previously seen which is a summary of some of the calls that were made. Did there come a time on the 22nd that you spoke to Maggie Williams, that you recall? I see it's 5:13 to 5:22 p.m. I think you have a recollection of having talked to her at that point in time?

Ms. THOMASES. This document refreshes my recollection.

The CHAIRMAN. So that was a completed call; you did have a conversation of some sort with her?

Ms. THOMASES. Yes, I did.

The CHAIRMAN. OK. Now, what was the nature of that conversation, if you can recall?

Ms. THOMASES. I don't remember everything in that conversation, but I believe that one of the things I told her at that time was that I had concluded that it would not be wise for me, for physical reasons, to come back to Washington to go to Little Rock with the President and the people from the White House the next day for Vince Foster's funeral.

The CHAIRMAN. OK. Do you know Ms. Huber?

Ms. THOMASES. I know who she is, yes.

The CHAIRMAN. Did Maggie Williams tell you at that time that she and Ms. Huber had locked away documents in the closet of the White House residence that had been taken from Mr. Foster's office?

Ms. THOMASES. No, she did not mention that to me at that time.

The CHAIRMAN. She made no reference about that?

Ms. THOMASES. She made no reference to that.

The CHAIRMAN. OK. There is another call that I'm going to bring up later, but I want to thank both the witnesses, and we'll come back at 2:15.

Senator SARBANES. Ms. Thomases, could I just be clear on one point? You say that conversation was, as you recall, your telling Maggie you would not be able to go to Little Rock because you evaluated that your physical condition would preclude doing that; is that correct?

Ms. THOMASES. Yes. If you want to know the details, I will share them with you. I had walked from my office to a meeting that I had that afternoon that was three blocks from my office. It had been exceedingly hot and I had not felt great when I got there. So when I got out of that meeting I wanted to make sure that I had an air conditioned cab. On my way home I thought about this and, as much as I wanted to be at Vince's funeral because I believe in going to funerals, I just felt that it would be just signing up for sickness and that it would be just not a sensible, prudent thing for me to do.

Senator SARBANES. Thank you very much.

The CHAIRMAN. Thank you. We stand in recess until 2:15.

[Whereupon, at 1:20 p.m., the hearing was recessed, to be reconvened at 2:15 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. I want to apologize to the witnesses. We're going to start in several minutes. Senator Bennett is just finishing up something, but he will be here with us. He's actually in the back and will be with us momentarily, and then we'll start.

I will indicate that Ms. Sherburne, the witness' Special Counsel, has advised the Committee that Maggie Williams arrived back in the United States this morning and that the White House—there was a question as it relates to any taping or any recordings—that the White House does not have any records of telephone calls from the First Lady's plane on July 20, 1993, including tape recordings of calls. So they do not have any record, and they don't have any tapes. That was the question that was raised. Again, as I indicated, counsel will be discussing the question of reviewing some of the testimony that has been given that might give different accounts as it relates to Maggie Williams.

[Pause.]

The Committee will come to order. We thank the witnesses.
Senator Bennett.

OPENING COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Thank you, Mr. Chairman. I appreciate your indulgence. I had to take care of another assignment.

Ms. Thomases, I can't begin to approach the Senator from North Carolina in drama, but I do want to start out with a recognition of the fact that you are, indeed, a very powerful person regardless of what title you may have. I don't know whether you describe it as "juice," as he did, but I don't know very many people in this Administration—or any Administration of my memory—who have the ability to drop in the White House pretty much at their convenience, spend a couple of hours going through the halls and offices and have a conversation with the President of the United States that is unscheduled in advance. It takes someone of tremendous stature to be able to do that, and you've testified here that you did that, and I congratulate you on your amassing that much influence.

It does, however, raise the question that I think the Senator from Massachusetts was pursuing, about what it is you may have said in these various phone calls and these conversations. I've taken notes. You've said I had no concern; I had not heard of any issue in the White House. You've said over and over again your main message in all of these conversations was how are you doing.

Given the nature of the power that you have, the question inevitably comes up, shouldn't that question really have been what are you doing rather than how are you doing.

Now, let me take you through some statements that have been made about you in depositions of other witnesses here to come back to that point.

First, Bernie Nussbaum. This is on page 141 of his deposition. It's just a few sentences. Speaking of you, he says, and I quote:

Yes, she's a friend. She's a friend of mine. She's a friend of a lot of people in the White House, including the President and the First Lady. She's an adviser. This was a decision that had to be made as to how the search was going to be conducted, and I felt comfortable discussing it with her.

Now, he later says on page 142 of his deposition:

She said people are concerned about whether I was using the correct procedure or whether the procedure was—people were concerned or disagreeing, something like that, whether correct procedure was being followed, whether I was using the correct procedure, whether it was proper to give people access to the office at all, something like that.

So he does not remember this as a how-are-you-doing kind of conversation. He remembers that you told him that some people were concerned about his procedure.

Then, Mr. Neuwirth, on page 112 of his deposition, said, referring to a conversation with Mr. Nussbaum:

Again, while I don't remember his exact words, in a brief discussion my understanding was that Mr. Nussbaum felt that Ms. Thomases and the First Lady may have been concerned about anyone having unfettered access to Mr. Foster's office.

Then, the final one—and we can discuss it—back to Mr. Nussbaum again, commenting on Mr. Neuwirth's testimony that I've just read where Mr. Neuwirth quotes Mr. Nussbaum as quoting you as saying that you and the First Lady had concern about unfettered access. Mr. Nussbaum says:

I don't have any memory of Susan Thomases mentioning the First Lady to me in this conversation. I do remember her saying what I said, that people were concerned. Now, is it possible that I extrapolated after that conversation and said something to Neuwirth along those lines? I guess it's possible that I did that.

So Mr. Nussbaum is holding out the possibility that he did, in fact, mention the First Lady in his conversation with you to Mr. Neuwirth, but that, as he thinks it through in his mind, you just said people were concerned.

Now, Ms. Thomases, can you help us out on all of this? Who are the people that were concerned that caused you to make these comments to Mr. Nussbaum?

Ms. THOMASES. I don't remember making that comment to Mr. Nussbaum. I truly do not remember.

Senator BENNETT. You agree that—

Ms. THOMASES. And I have no idea which people might have been concerned based on who I spoke to those days.

Senator BENNETT. Did you have any concern about unfettered access?

Ms. THOMASES. I had no concern about unfettered access.

Senator BENNETT. Did you ever use that phrase to Mr. Nussbaum?

Ms. THOMASES. No. I never heard that phrase until this hearing started.

Senator BENNETT. Did—

Ms. THOMASES. And Mr. Nussbaum's testimony was read to me during my deposition.

Senator BENNETT. Do you have any idea where the notion of concern about unfettered access would have come from in the minds of either Mr. Nussbaum or Mr. Neuwirth if it didn't come from you?

Ms. THOMASES. I have no idea. I'm sorry, Senator, I just have no idea.

Senator BENNETT. Is there anyone else who could have communicated that concern on behalf of the First Lady other than you?

Ms. THOMASES. I have no idea. I don't know who else they were talking to.

Senator BENNETT. Going back to my opening comment, search your memory and see if you can find in all of these how-are-you-doing kinds of conversations any step over—I won't say "cross the line" because that implies there is something wrong here, and I don't think there would have been anything wrong with it—but any movement into the persona that you're so famous for, that has earned you the right to do what I've described, go into the White House and have those kinds of conversations.

I don't think you have that kind of access to the White House because they want you to be their therapist and ask them how they're doing from time to time. I think you have that access because you do ask pointed questions.

In any of these conversations did you get into that area and express your views on any of these matters?

Ms. THOMASES. Senator, I don't believe I did so, and it is very unlikely that I would have challenged Bernie Nussbaum on an issue of how to conduct an investigation. Bernie Nussbaum was a very respected lawyer in New York who was quite well known for his investigative skills. He was a lawyer and a star in the practice of law in New York long before I ever went to law school. I went to law school in my 30's, and Bernie was a well established, quite famous lawyer by the time I got out of law school. It simply would not have occurred to me to challenge Bernie Nussbaum on what he thought was an appropriate way to conduct an investigation.

Senator BENNETT. You're very convincing. Your history shows that you are not afraid to challenge——

Ms. THOMASES. That's absolutely true——

Senator BENNETT. Did you challenge anybody else, if not Mr. Nussbaum? The list of conversations that Senator Bond and others have gone through is quite extensive. Can you think of any conversations you had with somebody other than Mr. Nussbaum where you expressed an opinion about how things were being done?

Ms. THOMASES. As I said earlier to the other Senators, I don't believe I discussed documents with anybody other than Mr. Nussbaum.

Senator BENNETT. Not necessarily documents, but how things were being done; how the procedure was going. In your conversations with Maggie Williams, did you express an opinion?

Ms. THOMASES. I don't think that it would be the type of thing that I would discuss with Maggie Williams, partly because Maggie Williams was not a lawyer and was not into documents and procedures.

Senator BENNETT. There were a lot of folks who weren't lawyers who ultimately ended up involved in this, as we've discovered.

In your conversations with the First Lady, did you ever discuss any of the procedures or any of the sense of how it was going during this period?

Ms. THOMASES. As I said in my opening statement, the First Lady and I never discussed documents or the search of Vince Foster's office.

Senator BENNETT. All right. Did you discuss the general tenor of the way the whole thing was moving forward?

Ms. THOMASES. With the First Lady?

Senator BENNETT. Yes.

Ms. THOMASES. No.

Senator BENNETT. I see. Thank you very much, Mr. Chairman.
The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Senator Simons, did you finish your round before——

Senator SIMON. No, I did not. I just took a minute to discuss bringing back other witnesses.

Senator SARBANES. That's what I thought. Mr. Chairman, I yield to Senator Simon.

Senator SIMON. Thank you, Senator Sarbanes.

Ms. Thomases, Jim Carville was quoted earlier as saying you are a "blunt instrument of enforcement." Was he talking about the Administration or was he talking about when you were on the staff of the campaign?

Ms. THOMASES. I think he was talking about when I ran the schedule. I was a very tough taskmaster.

Senator SIMON. Scheduling is a tough job.

Since the Administration has been in power, have you been in touch with the President and the First Lady as a legal adviser or as a friend?

Ms. THOMASES. As a friend and occasionally as a political adviser.

Senator SIMON. By way of background, it strikes me if Hillary Clinton wanted to communicate something to Bernie Nussbaum, it was a very strange way of doing it to talk to you and ask you to communicate it to Bernie Nussbaum. Hillary Clinton does not strike me as a person who would be reluctant to get on the phone herself and call the Legal Counsel or anyone else. Can you think of any other case, health care, any issue where Hillary Clinton said to you can you call Bernie Nussbaum and communicate this?

Ms. THOMASES. I don't know that she has never asked me to communicate anything to Bernie Nussbaum, but I do know that she did not ask me to communicate anything about Vince's office or Vince's files to Bernie Nussbaum. You are quite right, Senator, that Hillary Clinton certainly knows how to express her own views directly to Bernie Nussbaum or almost anybody else she wants to convey her views to.

Senator SIMON. Is it safe to say it would be out of character for her to communicate to you by phone, asking you to communicate to the White House Counsel?

Ms. THOMASES. I would say except when she would be very rushed and she was in a hurry or she was rushing someplace. Sometimes she used to, in the course of the campaign, ask me to deliver a message, but they usually were not substantial messages. They were just messages.

Senator SIMON. This was not an occasion that you recall where she was rushed in that way?

Ms. THOMASES. On the contrary, she was at her mother's home in Little Rock thinking about the loss of her friend and essentially waiting for her husband and her other friends to arrive to attend Vince's funeral.

Senator SIMON. Mr. Lindsey, the one brush you have with this whole question of documents is the meeting on the 22nd?

Mr. LINDSEY. That is correct.

Senator SIMON. Do you remember Bernie Nussbaum at any point in that meeting saying the President or Hillary Clinton or anyone else thinks we ought to conceal something? Obviously, there are legitimate concerns about executive privilege and personal papers of Vince Foster as well as personal income tax records of the President and so forth, but was there any suggestion that anything untoward should take place?

Mr. LINDSEY. No, sir, not at all. It was simply an attempt to try to balance the competing interests between the Park Police, who had a legitimate interest in knowing whether there were any documents in there that reflected on Vince's state of mind, and the Office of the Presidency, who had legitimate interests in documents that are either covered by executive privilege, attorney-client privilege or perhaps work product privilege. It was a theoretical discussion as much as anything about how do we accommodate these competing interests.

Senator SIMON. Do you remember the question of Whitewater coming up at all?

Mr. LINDSEY. No, sir, not at all.

Senator SIMON. Is it safe to say that here you have some competing interests, Federal agencies, conscientious people in the Department of Justice, Park Police, White House Counsel, others, who believe they have a responsibility, and what you have to do is to draw that line, and that's what that meeting was all about?

Mr. LINDSEY. Yes, sir. I didn't hear all of Jack Quinn's testimony, but I believe he testified there were people who believed that there should be less access than what Bernie's position or my position was. So Bernie did not have the extreme view, if you will, in that meeting. His was one that we need to accommodate these competing interests in a way that protects the privilege but allows the Park Police and the others to have access to what they need for the purposes they need it.

Senator SIMON. In this whole process, did you see anything that Bernie Nussbaum did that was either unethical or illegal?

Mr. LINDSEY. No, sir.

Senator SIMON. I have no further questions. I yield the balance of my time to Mr. Ben-Veniste.

Senator SARBANES. Why don't we go back to your side.

The CHAIRMAN. OK. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Ms. Thomases, when did you first learn and how did you first learn that a writing had been discovered in Mr. Foster's handwriting?

Ms. THOMASES. I can't recollect exactly which day. It was sometime after the funeral, and I first learned it from Bernie Nussbaum.

Mr. CHERTOFF. Now, the funeral occurred on Friday the 23rd?

Ms. THOMASES. Yes.

Mr. CHERTOFF. So it was sometime after Friday the 23rd?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Was it on Saturday the 24th?

Ms. THOMASES. I doubt it.

Mr. CHERTOFF. You have a recollection?

Ms. THOMASES. I have no specific recollection, but I go away on the weekends, and it would be a hard job for anyone to find me at that time. I didn't use to give out my weekend number.

Mr. CHERTOFF. Were you there Saturday and Sunday?

Ms. THOMASES. Yes, I was.

Mr. CHERTOFF. You got back Sunday night?

Ms. THOMASES. Probably on Monday morning.

Mr. CHERTOFF. Did you hear on Monday morning?

Ms. THOMASES. I don't remember whether I heard Monday morning.

Mr. CHERTOFF. Did you hear before you read about it in the newspaper?

Ms. THOMASES. Yes, I heard before I read about it in the newspaper.

Mr. CHERTOFF. How did Mr. Nussbaum communicate this to you?

Ms. THOMASES. He told me they had found a torn-up writing by Vince Foster, and that the President hadn't seen it yet.

Mr. CHERTOFF. So he told you before he notified the President of the United States?

Ms. THOMASES. I guess so.

Mr. CHERTOFF. You just testified that he told you they had found a writing and that they hadn't yet shown the President; right?

Ms. THOMASES. That's right.

Mr. CHERTOFF. Did he tell you whether they had shown Mrs. Foster yet?

Ms. THOMASES. No.

Mr. CHERTOFF. Did——

Ms. THOMASES. He made no mention of Mrs. Foster.

Mr. CHERTOFF. One way or the other?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Do you remember the time of day it was?

Ms. THOMASES. I have no recollection of what time of day it was.

Mr. CHERTOFF. Were you in your office or at home?

Ms. THOMASES. I have no recollection as to exactly where I was.

Mr. CHERTOFF. I assume it was a telephone call?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Why did he call you up and tell you this?

Ms. THOMASES. I may have been calling him in order to find out how the funeral went and, again, how things were going.

Mr. CHERTOFF. Let's look at this for a moment. The funeral occurred on Friday the 23rd; correct?

Ms. THOMASES. Yes.

Mr. CHERTOFF. You're away on Saturday and Sunday?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Now, Monday you're back at work?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Does it seem to you that if you were going to call to find out how the funeral went you would have called on Monday?

Ms. THOMASES. Yes.

Mr. CHERTOFF. So does that help you fix that it was on Monday that Mr. Nussbaum told you about the writing being discovered?

Ms. THOMASES. I don't know with certainty that he told me on Monday.

Mr. CHERTOFF. Did he tell you that he had already notified the First Lady about the note being discovered?

Ms. THOMASES. He didn't mention anything to me about the First Lady when he first told me.

Mr. CHERTOFF. So you don't know whether that's before or after the First Lady learned about it?

Ms. THOMASES. That's right.

Mr. CHERTOFF. Your recollection, you think, is that you made the call and he mentioned it to you?

Ms. THOMASES. That's right.

Mr. CHERTOFF. Tell us, was he reporting this to you in some way?

Ms. THOMASES. No, I think he was just mentioning it to me.

Mr. CHERTOFF. Did he just say by the way, we found a writing, or was there something more?

Ms. THOMASES. I can't remember his exact words.

Mr. CHERTOFF. Give us the substance.

Ms. THOMASES. The substance is that a writing had been found and that he was going to wait until the President got back to show it to the President.

Mr. CHERTOFF. That helps us place the time a little bit more, because the President actually was traveling on Monday but returned on Monday night. Does that help us confirm further that this conversation occurred on Monday?

Ms. THOMASES. Arguably, yes.

Mr. CHERTOFF. Now, in this conversation on Monday when he said he found the note and he was waiting for the President to get back, what did you say to him?

Ms. THOMASES. I have to tell you I didn't want to know very much about any note from Vince Foster because it did very little to help us understand what——

The CHAIRMAN. Could you repeat that again?

Ms. THOMASES. I said I initially had very little interest in what Vince Foster had written because hearing what he wrote wouldn't do anything to bring him back.

Mr. CHERTOFF. Is that what you said to Mr. Nussbaum?

Ms. THOMASES. I don't know what I said to Mr. Nussbaum.

Mr. CHERTOFF. Did Mr. Nussbaum tell you anything more about it?

Ms. THOMASES. Nothing that I can remember.

Mr. CHERTOFF. Did he tell you that there were no factual surprises in the note?

Ms. THOMASES. Something like that.

Mr. CHERTOFF. Did he tell you that there's no information that gave any special clue to Vince Foster's emotional state?

Ms. THOMASES. I don't remember those precise words, but he may have said something like that.

Mr. CHERTOFF. Let's go to page 120 of your deposition, line 7:

Question: ——

The CHAIRMAN. Wait.

Mr. CHERTOFF. Do you have your deposition? OK. We'll go to page 120, line 7:

Question: What do you recollect about your conversation with Mr. Nussbaum concerning the note?

Answer: He told me that the note had been found. He told me that there was no factual surprises in the note, there was no information that gave any special clue to Vince Foster's emotional state, and he said that he wanted to show it to the President. I thought it was before turning it over to the press, to tell you the truth, not law enforcement people.

Does that refresh your memory of your deposition of July 17 of this year as to what your conversation was?

Ms. THOMASES. Yes, it does.

Mr. CHERTOFF. So is it fair to say now that you actually did get into some discussion of the content of the note? Is that right?

Ms. THOMASES. I obviously remembered it at that time.

Mr. CHERTOFF. Could you pull the mike a bit closer?

Ms. THOMASES. Sorry. Obviously, I remembered it at that time.

Mr. CHERTOFF. On July 17?

Ms. THOMASES. On July 17.

Mr. CHERTOFF. About 2 weeks ago?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Was he conveying this information to you because he wanted to run it by you in much the same way that you indicated to Senator Bennett that he was running his procedure for doing the office search on the 22nd by you?

Ms. THOMASES. I don't know if that's why he was doing it. It may be because he knew I cared a lot about Vince.

Mr. CHERTOFF. So is your recollection now that in the conversation about the note you did not indicate that you didn't want to hear about it?

Ms. THOMASES. I probably indicated hesitance that was not reflected in the answer that I gave on the 17th.

Mr. CHERTOFF. I'm sorry. I didn't understand your last answer.

Ms. THOMASES. I said I don't think that this answer reflects the hesitance that I felt at the time.

Mr. CHERTOFF. Does your answer on July 17 express what the conversation was?

Ms. THOMASES. Yes, it does.

Mr. CHERTOFF. Did you indicate on this occasion, on this occasion you were talking to Mr. Nussbaum, that you thought the way he was going to handle it sounded OK to you?

Ms. THOMASES. Since that was my usual way of talking to Bernie, I could have said that to him.

Mr. CHERTOFF. That's the same essential turn of phrase you used on the 22nd when you talked to Bernie about the way he was going to handle the office; right?

Ms. THOMASES. That was certainly the way I thought he was going to handle the office.

Mr. CHERTOFF. So your recollection is that with respect to both his telling you about the discovery of the note on Monday the 26th and with respect to his telling you what he was going to do to the office on the 22nd, essentially both conversations involved him giving you his view, and you said that sounds OK to me. Is that basically right?

Ms. THOMASES. Basically.

Mr. CHERTOFF. Mr. Lindsey, in late 1993 and early 1994, was there a group of individuals at the White House who had the assignment of dealing with Whitewater-type issues?

Mr. LINDSEY. Yes.

Mr. CHERTOFF. You have to pull the mike——

Mr. LINDSEY. Yes.

Mr. CHERTOFF. Was Mr. Podesta part of that?

Mr. LINDSEY. Yes, he was.

Mr. CHERTOFF. Was Mr. Eggleston part of that?

Mr. LINDSEY. Yes, he was.

Mr. CHERTOFF. Did you know Mr. Podesta and Mr. Eggleston had a conversation with Mr. Tom Castleton about his moving a box of documents up to the residence and that this conversation took place sometime in the spring of 1994?

Mr. LINDSEY. No, I did not.

Mr. CHERTOFF. Were you aware of the fact that in the spring of 1994 Mr. Castleton had been called by the press concerning his movement of a box of documents from Vincent Foster's office?

Mr. LINDSEY. No.

Mr. CHERTOFF. I also want to move back, Ms. Thomases, to you with respect to the issue of your recollection about whether you had conversations with Mrs. Clinton about concerns over handling the documents in Mr. Foster's office and whether you related those concerns to Mr. Nussbaum.

Now, am I correct that here now in this room you are absolutely telling us that never happened?

Ms. THOMASES. You have to repeat it because I didn't quite follow what you were saying.

Mr. CHERTOFF. I'll take it slowly. Is it or is it not correct that you had a conversation with Mrs. Clinton during the period of July 21 to July 22 in which she expressed concerns about the way in which the documents in Mr. Foster's office were being handled?

Ms. THOMASES. She never talked about documents in any of the conversations with her that I had during that period.

Mr. CHERTOFF. Did she talk about the office?

Ms. THOMASES. She did not discuss the office.

Mr. CHERTOFF. You are absolutely firm that that didn't happen?

Ms. THOMASES. I'm absolutely firm that had she discussed documents with me at this time, I would have noticed it. It would have been a memorable thing for her to have mentioned because we were talking about emotions, children, religion, feelings, friendship; and had she brought up documents, it would have been so distinct I believe I would have remembered it.

Mr. CHERTOFF. What about conveying concerns about the documents or the office to Mr. Nussbaum on the 22nd, did that happen or didn't it happen?

Ms. THOMASES. My conveying that to Bernie——

Mr. CHERTOFF. Yes?

Ms. THOMASES. No, I don't believe that I conveyed that to Bernie Nussbaum.

Mr. CHERTOFF. Again, I have to go back to your deposition. I'm at page 99. It seemed to me you were a little less definite then. I just want to make sure you are definite and whether this has gotten firmer or not. At page 99, line 20:

Question: Is it possible, Ms. Thomases, that you spoke with the First Lady on the evening of the 21st and conveyed concerns raised by the First Lady in your conversations with Mr. Nussbaum on the 22nd?

Answer: I have no recollection of having done that because I have no recollection of a conversation that I had with her on the 21st, just my intuition that I would have reached out to her.

Now, in that answer you indicate you just don't recall a conversation on the 21st or you don't recall the substance of it. Is that now changing a little bit? You recall the conversation?

Ms. THOMASES. No, I don't think that I had a conversation with her on the 21st. I do recollect that I would have, when I got back to my hotel, maybe, perhaps reached out to her, but I still don't remember having reached her, and I don't remember having had a conversation with her on the 21st.

Mr. CHERTOFF. Now, going down to line 11:

Question: Maybe I can get to this same result by stating the same question negatively. Are you prepared to swear today that that didn't happen?

Answer: I couldn't swear because I don't have a recollection that—I mean, I would not be willing to swear for absolute for the reasons I've said to you. And there is a high possibility in my mind that I reached out for her and a possibility that, in reaching out for her, I reached her.

Then, let's go down to page 101, line 13:

Question: Can you be certain, under oath today, that you did not discuss with Mrs. Clinton on the 21st of July 1993 concerns that you or she may have had relating to the examination of Mr. Foster's office?

Answer: I can't swear unequivocally because I don't have memory about any, about the fact that I did have a conversation or what the conversation was about.

Now, I just want to make sure I understand what the position is here. Is it as it was on the 17th, that you "can't swear unequivocally because I don't have a memory about" a conversation or that you can tell us now, unequivocally, that you did not have a conversation with Mrs. Clinton during these 2 days about documents or Mr. Foster's office?

Ms. THOMASES. It's both. I do not remember having a conversation with Mrs. Clinton on the 21st. I still have this sense that I would have reached out for her, but I have no memory if I reached her; I have no memory of having reached her or having had that conversation. As I just said earlier, I do believe that my conversations with her during these days were about loss of a friend, emotions, worrying about Maggie, thinking about how her husband felt, talking about what was going to happen and if she had brought up anything to do with searching a document or anything lawyerly about documents or anything, it would have been so out of the mood of the time that I would recollect it, but I can't—

Mr. CHERTOFF. Did you talk to Maggie Williams on the 22nd?

Ms. THOMASES. Yes, I did talk to Maggie Williams both on the—I think I spoke to her both on the 21st and the 22nd.

Mr. CHERTOFF. I want to focus on the 22nd now. Where was that conversation?

Ms. THOMASES. I was at my office.

Mr. CHERTOFF. In New York?

Ms. THOMASES. No, in Washington.

Mr. CHERTOFF. You called her by phone?

Ms. THOMASES. Yes.

Mr. CHERTOFF. About when during the day?

Ms. THOMASES. I have no idea.

Mr. CHERTOFF. It was certainly in the morning because you went back to New York in the afternoon?

Ms. THOMASES. And I had a meeting that was to have started at noon that day.

Mr. CHERTOFF. Did you see her in person on the 22nd?

Ms. THOMASES. I know she recollects seeing me in person, but I don't recollect seeing her in person.

Mr. CHERTOFF. How do you know that?

Ms. THOMASES. How do I know that?

Mr. CHERTOFF. Yes, how do you know what she recollects?

Ms. THOMASES. I was told that her testimony suggested that she remembered talking to me.

Mr. CHERTOFF. I see. So someone's told you about her testimony?

Ms. THOMASES. Yes.

Mr. CHERTOFF. In advance of your coming here?

Ms. THOMASES. Yes.

Mr. CHERTOFF. But you don't remember seeing her in person?

Ms. THOMASES. I don't remember seeing her in person.

Mr. CHERTOFF. Whether you saw her in person or not, what was the conversation with Maggie Williams about on the 22nd? I know you've given us the 21st already. What was it about on the 22nd?

Ms. THOMASES. I talked to her about how she was holding up. I talked to her about going to the funeral. I talked to her about how I was holding up. I talked to her about how much work I had and how pressured I was feeling at the time.

Mr. CHERTOFF. Anything else?

Ms. THOMASES. I don't remember anything else more specific than that.

Mr. CHERTOFF. Did you talk to her about insurance?

Ms. THOMASES. I don't specifically remember talking to her about insurance, but it's quite possible that I did.

Mr. CHERTOFF. How is it possible that you talked to her about insurance in the middle of these discussions about these emotional things?

Ms. THOMASES. Because the last time someone who I cared a lot about took his own life, there were incredible complications about insurance.

Mr. CHERTOFF. Did you talk to Ms. Williams about this?

Ms. THOMASES. I don't remember talking to her about it, but given the—

The CHAIRMAN. Let me just help you here. She has some recollection about you speaking about insurance—this is just to be helpful—and about a person who you are aware of and some extraordinary circumstances. I'm going to ask now that we—because I know Senator Sarbanes' light's been on and he's been quite generous in allowing us to pursue this—we turn to Senator Sarbanes before we continue the questioning on this side.

Senator Sarbanes.

Senator SARBANES. Thank you very much, Mr. Chairman. I'll yield to Senator Dodd in a moment here, but I just want to ask, Ms. Thomases, you came down from New York to Washington on Wednesday the 21st?

Ms. THOMASES. Yes.

Senator SARBANES. You went back to New York on the 22nd?

Ms. THOMASES. On the 22nd.

Senator SARBANES. Do you recall about when you went back to New York?

Ms. THOMASES. It was probably either on the 3 or 3:30 flight.

Senator SARBANES. Now, you said you had a 4 p.m. meeting down here?

Ms. THOMASES. No, I had a noon meeting down here and a 5:30 meeting in New York.

Senator SARBANES. On the 22nd?

Ms. THOMASES. On the 22nd.

Senator SARBANES. OK. Senator Dodd.

Senator DODD. Thank you, Mr. Chairman. You both have been very, very patient here today. This has been a long day.

I should also say, Mr. Chairman, I know both of these witnesses. I know Ms. Thomases, and I have listened to some people trying to characterize her with different language here. She's a very, very competent attorney, and there are many of us who have had reason to work with her in the past on a number of issues.

I have found her to be tremendously forthcoming and straightforward; very direct—which is refreshing, I might add, in this business—regardless of which side we're on on issues. We don't always get direct, candid answers from people. She's never been in my employ, we've never worked together in that sense, but that's not a bad reputation as far as I'm concerned. I wish we had a few more people in this town, frankly, who came here from time to time with that kind of advice.

I wanted to raise, Mr. Chairman, I gather it has been in the past, but so much has been made of this note, and maybe the one person who can shed a lot of light on it is Mrs. Foster and both in here, I gather, and in this 302 document that the FBI prepared, Mrs. Foster stated that she believed that the original note was probably written by her husband on or about July 11, or sometime between July 4 and July 11.

She goes into some reasons why she believes that's probably the case. The Park Police, in their investigation, also talked to Mrs. Foster and included that kind of information in their report. I presume that those documents have been made part of the Committee hearing record, and if they haven't been, then I'd ask consent that they be included because I think it's important that there was some evidence bearing on the origins of that note from a person who would have more than just a passing familiarity with a history of it. I think that ought to be included. Much has been made of it, obviously, over the last number of weeks.

Again, to state what I think all of us have concluded, that, in fact, there's nothing in that note that is embarrassing to the White House, which is important, I think. If we didn't have the note or if the words were blurred on it and it was unclear what was there, I could see where the speculation of what might have been said there would pique interest. But since we have the note, we know what it says and, in fact, the only indictments in that note are people outside of the White House.

So it seems to me with the benefit of that evidence, a tremendous amount of time has been spent on this particular document. I can't

discern any possible reason if someone were to want to hide this note or conceal it, what the rationale would be from anyone inside the White House wanting to do it since nothing Mr. Foster said in that note does anything but, in fact, compliment the White House and vindicate it, in his view, from any actions of wrongdoing.

I think it's important to make that point over and over again. If we didn't have the note, if we couldn't read the note, I could see where the speculation might come from. Since we have the note, we know what it says, we have a pretty good idea when it was written and why it was written, it seems to me just dwelling on this note is—again, it may have some value to some, but it mystifies me when we know that much about it, it seems to me, as to why there is a continuing interest.

Mr. Chairman, I really don't have any additional questions. I just want to thank both of our witnesses for their candor and their help in this regard, and I'll be glad to yield whatever time I have to you, Mr. Chairman, or to Mr. Ben-Veniste.

Ms. THOMASES. Thank you, Senator.

Mr. BEN-VENISTE. Following up on Senator Dodd's comments, Mr. Chairman, one thing that came out yesterday that I don't think was clear in the record was the question of whether there would be an investigation of the contents of the note. As I recall, the issue of the reference in the note as to whether the FBI lied—I guess the context of that was in connection with the Travel Office investigation, although that was not explicitly stated.

My recollection is that that was, in fact, pursued along with the investigation of the discovery of the note by the FBI and through the Office of Professional Responsibility at the Department of Justice. I think that simply ought to be added to complete the loop with respect to the issue raised, I guess, by Mr. Gergen yesterday about whether there was something in the note that would spur further investigation. That, in fact, happened, and that investigation was undertaken and concluded.

The CHAIRMAN. I've just been going over this with counsel. To the best of your recollection, Ms. Thomases, on or about the 20th, you learned about Vince Foster's death. You're in New York?

Ms. THOMASES. Yes.

The CHAIRMAN. As best as you can fix, about what time did you learn of that? Was it a phone call?

Ms. THOMASES. It was a phone call.

The CHAIRMAN. You're in your home?

Ms. THOMASES. I was in my home.

The CHAIRMAN. Who informs you?

Ms. THOMASES. Hillary Clinton.

The CHAIRMAN. The First Lady called you?

Ms. THOMASES. The First Lady called me at home.

The CHAIRMAN. About what time was that?

Ms. THOMASES. It was after 9:30 in the evening. I can't tell you precisely what time.

The CHAIRMAN. So approximately 9:30?

Ms. THOMASES. I can't pinpoint it that—

The CHAIRMAN. OK. But you do know that it was sometime from 9:30—

Ms. THOMASES. I had been out all day that day, and I arrived home sometime at or about 8:30. I put my son to bed, and it was after I had put him to bed that the phone rang.

The CHAIRMAN. What did the First Lady say to you? She said Vince Foster, Vince is——

Ms. THOMASES. She told me that she had some very sad news for me, that Vince had taken his own life. I tell you, quite frankly, Senator, that was to me the most shocking news since it seemed the most unlikely thing for Vince to have done.

The CHAIRMAN. Sure. Now, you didn't have occasion to speak to the First Lady again that evening, did you?

Ms. THOMASES. No, I didn't.

The CHAIRMAN. OK. But you did make a phone call?

Ms. THOMASES. I had some work to do. I probably spent a little bit of time after I talked to my husband and pulled myself together, I probably reached out for Maggie.

The CHAIRMAN. So there came a time after the First Lady called you that you called Maggie Williams?

Ms. THOMASES. That I reached out for Maggie Williams.

The CHAIRMAN. You called her on the phone?

Ms. THOMASES. Right.

The CHAIRMAN. Do you recall where you called to reach her?

Ms. THOMASES. I probably called Signal to find her.

The CHAIRMAN. CECO?

Ms. THOMASES. Signal.

The CHAIRMAN. Oh, Signal. Is that the White House switchboard?

Ms. THOMASES. Whatever it is, it's the system in the White House that knows how to reach people when they are not readily available.

The CHAIRMAN. OK. You spoke to Maggie Williams?

Ms. THOMASES. I did not speak to Maggie Williams that night.

The CHAIRMAN. You did not?

Ms. THOMASES. Nor early that morning.

The CHAIRMAN. OK. Now, there comes a time when you then went to Washington?

Ms. THOMASES. Yes.

The CHAIRMAN. Do you remember what plane you took?

Ms. THOMASES. I have no idea——

The CHAIRMAN. Do you remember what time——

Ms. THOMASES. —which of the shuttles. It was sometime after noon on that day.

The CHAIRMAN. So it was in the afternoon?

Ms. THOMASES. It was in the afternoon. I had work to do in the morning; I had some documents to get out, and I couldn't really leave town until they were completed.

The CHAIRMAN. So that takes us to the 21st?

Ms. THOMASES. Yes.

The CHAIRMAN. Would that be a Wednesday?

Ms. THOMASES. That's a Wednesday.

The CHAIRMAN. It just so happens that that is generally a day that you come to Washington?

Ms. THOMASES. That's right.

The CHAIRMAN. One day a week, it's generally Wednesday, so it was just by that circumstance that you were going to come down in any event?

Ms. THOMASES. That's correct. I had something I had to do that afternoon and had to be at my office that afternoon.

The CHAIRMAN. Now, you come down on the 21st. Did you have occasion, then, to go to the White House?

Ms. THOMASES. As I said earlier, when I first arrived, I——

The CHAIRMAN. I have to tell you I don't know how you can recall these dates because I can't recall sometimes even the sequence of dates. I'm just trying to get it straight. So——

Ms. THOMASES. I have refreshed my recollection by looking at my time records. It is not as if it's been all sitting up here in my brain.

The CHAIRMAN. I understand. So you're on the 21st, you're here, you come in the afternoon. To the best of your recollection, what then takes place? Is there a time that you go to the White House?

Ms. THOMASES. I stopped at the White House before I went to my office because I wanted to arrange to see the President, and I thought that the best way to do it was to actually go to the White House and find out what his schedule was and, therefore, the best time that he might be free to see me.

The CHAIRMAN. Did you have occasion to see or speak to Mr. Quinn?

Ms. THOMASES. Do I regularly have occasion to?

The CHAIRMAN. No, during this period of time on the 21st.

Ms. THOMASES. I have no clear recollection of seeing or speaking to Mr. Quinn.

The CHAIRMAN. You have no recollection of him indicating to you that he disagrees with the methodology which has been suggested to review these documents?

Ms. THOMASES. I don't remember talking to him about the issue of these documents at all.

The CHAIRMAN. So you don't know whether or not it could have been Mr. Quinn who had suggested that he was not in step or did not agree with Bernie in terms of the procedure, the initial procedure which had been suggested and that Mr. Heymann thought was agreed to, the procedure by which they would review documents? You aren't aware that there was this difference or at least a difference of opinion as to how these documents should be handled?

Ms. THOMASES. I don't believe I discussed it with Mr. Quinn.

The CHAIRMAN. I'm only——

Ms. THOMASES. It was not——

The CHAIRMAN. Yes, go ahead.

Ms. THOMASES. I'm sorry to interrupt you.

The CHAIRMAN. No, please.

Ms. THOMASES. It was not in my ordinary course of behavior to talk to Mr. Quinn about such things.

The CHAIRMAN. OK. Senator, do you have any questions?

Senator FAIRCLOTH. I have a question or two.

The CHAIRMAN. Go ahead. I'll yield the rest of my time to you.

Senator FAIRCLOTH. It's more observation, maybe, than question, but, Ms. Thomases, you made 17 calls in 2 days to the White House. Seventeen calls on probably the busiest day it's had in a

long time. Practically all of them were made before 1 p.m., before the investigators, the officials were to go into the office of Vince Foster.

Now, follow my way of thinking here. Practically all of these calls were made before 1 p.m. Then, after 1 p.m., you made two—one to Maggie Williams, one to Bruce Lindsey—and then at 7 p.m. that evening, you made one to Little Rock, I assume to Mrs. Clinton.

You are asking us as a Committee to believe that 17 calls in 2 days involved airy persiflage, children, and health, particularly the concentration of them before the 1 p.m. entry into the office. Now, here you are, a brilliant, smart, New York-Washington lawyer with a reputation for being a hard-hitting, tough, quick, exacting, move-on type of person and today you tell us you had 17 calls you—

Senator DODD. Could my colleague hold up just on that 17 number? I'm trying to count here quickly.

Senator FAIRCLOTH. Don't count, 15, whatever—

Senator DODD. Wait a minute. We're talking about witnesses being accurate. Let Senators be accurate in their questions, too.

Senator FAIRCLOTH. I'm talking about 17 calls in 2 days.

Senator DODD. I'm counting them, and I have a—

Senator FAIRCLOTH. One, two, three, four, five, six, seven, eight, nine, 10, 11, 12, 13, 14, 15, 16, 17.

Senator DODD. Maybe we are looking at different—

Senator FAIRCLOTH. They just teach different in Connecticut.

The CHAIRMAN. I think—

Senator FAIRCLOTH. That's beside the point.

The CHAIRMAN. Please. Let us just agree that there were at least a dozen phone calls over this period of time. Let the Senator proceed.

Senator FAIRCLOTH. But these many calls that transpired, the series, the sequence of most of them before 1 p.m., then the two after, and then the one that evening to Mrs. Clinton, everything about that would lead this side of this Committee to believe that you were directing how this would be handled at the White House, the flurry of calls before 1 p.m. and then the calls after 1 p.m. The officials went into the office after 1 p.m., that you then reported how it had been handled, and later that evening you reported it to Mrs. Clinton. That would certainly be the conclusion we would draw.

Yet you say, hard-hitting, tough, brilliant lawyer spends 2 days and a lot of telephone calls talking about babies, just nice, sweet, airy, persiflage conversation on the most traumatic day the White House ever had. Now, that might be true, but I find it hard to believe. Let me ask you another question.

Senator SARBANES. Time is up, Mr. Chairman.

The CHAIRMAN. I'm going to give him another question, because there was an interruption in the clock and we have agreed we're going to keep the clock running.

Senator DODD. Can't she respond to that, though?

The CHAIRMAN. If she wants to respond, yes.

Senator FAIRCLOTH. Yes, I'd like a response.

The CHAIRMAN. Ms. Thomases, would you care to respond?

Ms. THOMASES. I can only tell you what I remember, sir, and I remember what I remember, and I do not remember talking about

documents or review of Vince Foster's office with anybody except Bernie Nussbaum.

Senator FAIRCLOTH. Let me ask you another question. Now, you have been asked about documents that were destroyed, shredded, altered, burned or whatever, but I want to ask you if you know—and this is a very important question—do you know of any Whitewater documents that the Clintons have that have never been released and kept secret, documents that might have been removed on Tuesday night immediately after the knowledge of Mr. Foster's death became known?

Do you know of any documents that were taken from Mr. Foster's office regarding Whitewater that the Clintons have not made public or turned over to this Committee? Do you know of any documents, anywhere, not shredded, not destroyed, that have not been made available to this Committee regarding Whitewater? This is a very important question.

Ms. THOMASES. The scope of the question is a little bit hard to take. My first reaction is to answer no, but I didn't hear the scope of the question, so, since I'm under oath, I want to make sure that I've heard the entire scope of the question.

Senator FAIRCLOTH. I'll give you the question again. Do you know of any Whitewater documents that the Clintons have never released, as their attorney, that they've kept in secret? Do you know whether the Clintons have not made public or turned over to this Committee any documents taken from Mr. Foster's office regarding Whitewater?

Ms. THOMASES. The answer to that question—it's a little bit garbled, your question, Senator, but I think my answer to that question is no.

Senator FAIRCLOTH. You know of no documents——

Ms. THOMASES. I know of no documents that I know the Clintons had that they have not turned over to this Committee.

The CHAIRMAN. In regard to Whitewater?

Ms. THOMASES. In regard to Whitewater.

The CHAIRMAN. That came from Vince Foster's office?

Ms. THOMASES. That came from Vince Foster's office.

Senator FAIRCLOTH. There is no possibility that Maggie Williams took out a stack of documents, as a Secret Service man said he saw her taking out, and that they were not turned over to this Committee that you know of?

Ms. THOMASES. Not that I know of.

Senator FAIRCLOTH. All right. Thank you.

The CHAIRMAN. OK. Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I must say that I think we've just witnessed some berating of this witness. Let me say Senator Faircloth made a big to-do about these phone calls, including one he said was made to Hillary Clinton on the night of the 22nd. The logs we have showed that that call was to the Rodham residence and it lasted a minute.

Now, I don't know whether you ever even reached Hillary Clinton, but given the nature of the way you like to make lots of phone calls and talk to people, and that was a pattern that was established, I gather, well before these events occurred, I would take it

that you probably didn't reach anyone and have any sort of substantive conversation.

Ms. THOMASES. I agree, Senator. I do not believe I reached Hillary Clinton the night of the 22nd.

Senator SARBANES. Also, we have other calls, similar, very short calls to the Chief of Staff's Office. As I understand it, a number of them were made to McLarty's office, whom you were trying to reach, but as I understand it you don't think you reached him or talked to Mack McLarty on the 22nd?

Ms. THOMASES. I say to you I don't believe that I talked to Mack McLarty or reached him. I kept calling back because I wanted to reach him, but I was never successful.

Senator SARBANES. I think it's important, Mr. Chairman, to get that on the record. I was struck by, in the deposition that was taken of Ms. Thomases, the nature of the pressing of her. I mean, she would say I don't remember, I have no recollection of that sort of conversation, and then she'd be asked, "Are you prepared to swear today that that didn't happen?" She says, "I couldn't swear because I don't have a recollection that—I mean, I would not be willing to swear for absolute for the reasons I've said to you. And there is a high possibility in my mind that I reached out for her and a possibility that, in reaching out for her, I reached her."

Then that was repeated, "Will you swear unequivocally," when she would say I don't remember having that conversation. In fact, at one point it prompted Mr. Ben-Veniste to say—this is during the deposition—"We get into litigation semantics, and I know you're not trying to do something untoward or something that's not been done with any other witness in this proceeding—of which there have been about 60—that when a witness doesn't recall something then to say do you swear that it didn't happen, or can you unequivocally rule it out, or is it possible." Then he went on to observe, "This strikes me as unusual in this kind of procedure."

I mean, it's very important to get out of you your best recollection of things. I think as Senator Simon noted, we're talking about events that happened more than 2 years ago, and we're trying to pinpoint them right to the minute. We have some records here that serve our purpose in trying to do that, but I think we ought to try to keep this record clear. As I go through the phone records and the length of them, a number of the phone calls were very short in length and would lead me to think that you were trying to reach somebody unsuccessfully?

Ms. THOMASES. Yes, Senator.

Senator SARBANES. The calls that had some length to them, you have testified here today about those calls. I just think that the record ought to be made clear on that in that regard.

Senator DODD. My colleague and I have just been counting it up. I count three calls of less than a minute duration, five calls where messages are left entirely, and some it looks like with a note of a phone call and a message, so you get double counting in a sense.

Again, as we've all heard here—no one debates this point—it was a highly traumatic occurrence where someone who was well known by Ms. Thomases has taken his own life and close to the very people with whom the individual had been close to. To find that there were seven or eight calls in 2 days, when you weed out the mes-

sages, the voice mails, and the obvious calls where it appears as though less than 54 seconds were spent, where you can't assume there was much of a conversation, given the circumstances, seems fairly normal to me.

That's the point I was trying to make, Mr. Chairman; I wasn't trying to be testy about it, but it seems when you say 17 calls, then all of a sudden that conjures up in everyone's mind one image. If you look carefully through here, as I think we've got an obligation to do, and see how many were messages left that were not connected and how many were apparently conversations, given who the people are, given the circumstances of it, as I look at it, it looks fairly normal. Maybe to other people it's not, but to me it look like fairly standard practice between people during a time like this. I appreciate my colleague yielding on the point.

Senator SARBANES. I think it's important. For instance, you were asked today what time did Mrs. Clinton call you on the night of Vince Foster's death to tell you. You said as best you could recollect, it was 9:30 or later. I just don't want you to get called out. I assume if someone then said Mrs. Clinton didn't find out about it until 9:40, and you had said that you heard from her at 9:30, the question would then become: Now, how could you have heard from her before she found it out? I guess your response would be, I guess I said 9:30, but it could have been somewhat later than 9:30. Would that be correct?

Ms. THOMASES. That would absolutely be correct. As I said, I had come home, I had put my son to bed; he usually goes to bed then, and it was sometime after that. Thank you, Senator.

Senator DODD. Thank you, Mr. Chairman, by the way. That clarity on the point that was asked and the question of Ms. Thomases about any other documents, I think you helped very much in framing that question very well.

Senator SARBANES. We want to find out what happened, but this ought not to become some sort of trick exercise.

The CHAIRMAN. That's why I attempted to clarify. I didn't want you to be in a situation where it was a partial answer.

Let me, if I might, Ms. Thomases, just touch on the calls that you had with Mrs. Clinton. Sometime after 9:30 on the 20th you got a call from Mrs. Clinton, and she indicated to you the death of Vince Foster. Thereafter, when was the next time that you recall having called Mrs. Clinton or having gotten a call from her?

Ms. THOMASES. I think I spoke to her briefly on the 22nd.

The CHAIRMAN. On the 22nd?

Ms. THOMASES. On the 22nd.

The CHAIRMAN. Do you have any idea what time that was? Would that be the call at 7:12, the call to the Rodham Arkansas residence? Would that refresh your recollection?

Ms. THOMASES. No, I don't think that was the call, Senator. I think I spoke to her earlier in the day that day, but I can't tell you exactly when I spoke to her. I just have a recollection that I spoke to her, and if you want, I can tell you what I recollect speaking to her about.

The CHAIRMAN. Yes, I'd appreciate that.

Ms. THOMASES. I spoke to her about, as I had spoke to Maggie and I was looking for Bruce to talk to him about, the likelihood

that I would not end up coming to the funeral, and I think she and I talked about it.

The CHAIRMAN. I have one last question. Do you recall any other subsequent phone calls that you initiated to her or that the First Lady initiated to you after that call on the 22nd?

Ms. THOMASES. No, I don't think I spoke to her——

The CHAIRMAN. Obviously, I'm talking about that period.

Ms. THOMASES. After that call, I really don't think I spoke to her until the following week.

The CHAIRMAN. Fine. I have no further questions.

Senator Faircloth.

Senator FAIRCLOTH. I have a very brief question, Ms. Thomases, and I realize that some of the calls were very brief, and they could have been leaving messages. I agree. We do not have a record of calls, and they have not been made available to us, returned to you from the White House. In the role you played and the image you held among White House employees, were your calls normally returned or were they pretty much thrown in a velvet wastepaper basket and you never heard back?

Ms. THOMASES. Sometimes they were returned and sometimes they were not returned, and I tried not to take offense since people had many other things to do.

Senator FAIRCLOTH. But generally you got your calls returned when you called the White House, didn't you?

Ms. THOMASES. It depended on who I was calling and how much they wanted to talk to me.

Senator FAIRCLOTH. OK. I understand directness. Mr. Chairman.

The CHAIRMAN. Yes?

Senator FAIRCLOTH. My staff has spoken to a former Director of the White House Military Office, and he says that all phone calls from the ground to an airplane in the Special Air Wing or from an airplane to the ground are documented and recorded. All telephone calls are channeled through Andrews Air Force Base.

Mr. Chairman, I would like to request that you today ask, in writing, from the Secretary of the Air Force and, more specifically, the Commanding Officer of the Air Wing at Andrews Air Force Base, for all documents and tape recordings. This is not under the White House control, and the Air Force would have it.

The CHAIRMAN. I'm going to ask counsel in the interest of attempting to pin down more clearly when the call came up because, there's a little inconsistency. I will not address it now unless my colleagues want me to, and I don't think they do, as the hour grows later.

Senator DODD. Mr. Chairman, that would be one hell of a set of hearings if that were the case.

The CHAIRMAN. I will ask our counsel to review the request to find out whether we can obtain a log of the calls and to ascertain if the calls are recorded. We made an initial inquiry to the White House, but we'll check the status of the situation. So I'm going to ask both Mr. Ben-Veniste and Mr. Chertoff to review that and make that request.

Senator FAIRCLOTH. This is what we've been told——

The CHAIRMAN. Let's ascertain what the facts are. I don't know if it is. I'm going to ask counsel to do that——

Senator SARBANES. Mr. Chairman, I would suggest that Mr. Faircloth make that colonel who is the source of his information available to counsel to discuss this matter.

The CHAIRMAN. OK, we'll see if the——

Senator SARBANES. I think that would be helpful.

Senator FAIRCLOTH. I'm sure he would be. I haven't asked him, but I feel certain he would be.

Senator SARBANES. Fine.

Senator FAIRCLOTH. There's no reason to hide, the information is either available or it isn't available, and I sure don't know. I haven't been in the White House yet.

The CHAIRMAN. Let's ascertain whether that information is available. Mr. Chertoff, do you want to—unless, Senator Sarbanes, you want to go here or——

Senator SARBANES. Why don't you finish your round and then we'll finish up.

Mr. CHERTOFF. I want to go now back to the 22nd and some of the questions Senator Bennett pursued with you. We have, I think, with the help of your deposition, talked a little bit about your discussion with Mr. Nussbaum on the 26th when the note was brought to your attention, but I want to go back to the 22nd, the discussion with Mr. Nussbaum then, in which you've indicated that your response was go ahead and do it like you are doing it; it sounds OK to me, in substance. It seems to me the critical inconsistency here relates to how this subject came up.

Correct me if I'm wrong, Ms. Thomases, but my understanding is that your testimony is that on the 22nd when you talked to Mr. Nussbaum, your reason for talking to him was exclusively matters of sentiment or personal feeling, and he was the one who raised the subject with you about Mr. Foster's office and the documents. Is that your testimony?

Ms. THOMASES. That is my testimony.

Mr. CHERTOFF. I have to go back to Mr. Nussbaum's testimony because, as we go to page 139 of the testimony, starting at line 3, Mr. Nussbaum is asked:

Question: What was the conversation on the 22nd with Susan Thomases?

Answer: The conversation on the 22nd was that she asked me what was going on with respect to—what was going on with respect to the investigation or the examination, the examination of Mr. Foster's office. She had heard there were discussions in the White House with respect to this issue, which there were on the 22nd, which you'll get to, I presume. Was everything OK, what was going on, and I said I am having discussions with people.

That was page 139. Then, we go down further and at line——

Ms. THOMASES. Excuse me, is this my deposition?

Mr. CHERTOFF. No, this is Mr. Nussbaum's. I'm giving you Mr. Nussbaum's recollection. The point is that Mr. Nussbaum recalls that you brought the subject up. Then, it gets more specific. At page 140, line 6, Mr. Nussbaum is asked:

Question: How long was the conversation?

Answer: A few minutes, not very long.

Question: Did she tell you how she had heard there were discussions concerning the matter in which the review would occur?

Answer: The search would occur.

Question: The search would occur?

Answer: No, she didn't say how, she just said she had heard.

Then, we——

The CHAIRMAN. That's why, by the way, I raised the question that maybe you had heard this from Mr. Quinn. That's why I tried to ascertain that.

Mr. CHERTOFF. We go on to page 142 where Mr. Nussbaum is asked:

Question: Did she say that anybody was concerned about giving law enforcement people unfettered access to the documents?

Answer: She said people are concerned about whether I was using the correct procedure or whether the procedure was—people were concerned or disagreeing, something like that. Whether a correct procedure was being followed, whether I was using correct procedure, whether it was proper to give people access to the office at all. Something like that.

But I said Susan—she wasn't in the White House; at least I didn't know she was in the White House—I said I'm having discussions with various people. As far as the White House is concerned, I will make a decision as to how this is going to be conducted. It's going to be done the right way. It will balance out the various interests. It's going to be done the way I think it should be done.

Now, that leads me to two questions. Mr. Nussbaum seems unequivocal that you raised the question with him, that you were the one who indicated an awareness that people were concerned. I want to be quite clear; I want to give you the opportunity right here. Your recollection is not so; is that right?

Ms. THOMASES. My recollection is not so.

Mr. CHERTOFF. His recollection is that you said people are concerned; people are disagreeing, and that you said that to him. Is your recollection that that's so or not so?

Ms. THOMASES. I don't recollect saying that people were concerned to him, nor do I recollect talking to people who had expressed to me any concern.

Mr. CHERTOFF. Up to this point in time, the universe of people you had spoken to included the President; right?

Ms. THOMASES. Yes.

Mr. CHERTOFF. The First Lady?

Ms. THOMASES. Right.

Mr. CHERTOFF. Mr. McLarty?

Ms. THOMASES. No, I didn't talk to Mack.

Mr. CHERTOFF. You haven't spoken to Mr. McLarty?

Ms. THOMASES. I haven't spoken to Mr. McLarty.

Mr. CHERTOFF. Had you spoken to Maggie Williams?

Ms. THOMASES. I had talked to Maggie Williams.

Mr. CHERTOFF. Anyone else in the White House?

Ms. THOMASES. I may have talked to a number of the younger people in the White House.

Mr. CHERTOFF. It seems unlikely the younger people's concerns would be figuring into this. So when we talk about the universe of people, people whose opinions might be expected to carry weight with Mr. Nussbaum, is it fair to say the three people you had talked to before you talked to Mr. Nussbaum were the President, the First Lady and Maggie Williams? Is that right?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Finally, let me turn to later in the day on the 22nd. We have a sequence of calls, a call from 5:13 to 5:22 p.m. to Maggie Williams, then a 3-minute call to Bruce Lindsey. Why did you call Mr. Lindsey?

Ms. THOMASES. I probably called Mr. Lindsey because when I found out, when I made the judgment that I couldn't go to Little Rock, the most certain way to get that information communicated to the President was to tell Bruce Lindsey.

Mr. CHERTOFF. Now, when you spoke to Ms. Williams in this time period, around 5:13 in the afternoon, did she tell you that either she was in the process of moving documents to the residence or that she had just completed the process of moving them to the residence?

Ms. THOMASES. She didn't say anything about it.

Mr. CHERTOFF. Did she say she had just spent a period of time sitting with Bernie Nussbaum or being with Bernie Nussbaum in Vince Foster's office going through documents and selecting documents to go to the residence?

Ms. THOMASES. No.

Mr. CHERTOFF. She didn't say anything about what her activities were?

Ms. THOMASES. No.

Mr. CHERTOFF. Did she tell you she had just spoken to the First Lady?

Ms. THOMASES. I don't recollect her telling me that she had spoken to the First Lady. In fact, I don't remember that conversation being as long as my time records indicate the conversation was. So I may have talked to the office that amount of time, but I may not have talked to her all that time.

Mr. CHERTOFF. This is a 9-minute call; right?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Who in the office did you talk to for 9 minutes if not her?

Ms. THOMASES. I could have talked to Evelyn while I was waiting to talk to her, or I could have been looking for her and not reached her. They may have said she was out of the office and coming back. I do not remember that conversation being a long conversation.

Mr. CHERTOFF. Do you remember having a conversation with her at that time of day?

Ms. THOMASES. I don't remember for sure, but I suspect that I did because she was one of the people that I wanted to tell that I would not be going to Little Rock.

Mr. CHERTOFF. She didn't indicate to you in this conversation—or for that matter in any other conversation on that day—that she had been through the process of going into Mr. Foster's files looking for documents that belonged to the Clintons with Mr. Nussbaum? That didn't come up?

Ms. THOMASES. That didn't come up.

Mr. CHERTOFF. Did you talk to the First Lady later that night?

Ms. THOMASES. I don't think I did.

Senator SARBANES. This 1-minute call to the Rodham residence, was that to leave a message for her to get back to you?

Ms. THOMASES. Probably. I don't know for sure.

Mr. CHERTOFF. You don't know whether she did or not?

Ms. THOMASES. I don't know that she did or not.

Mr. CHERTOFF. At some point afterward, she obviously did speak to you; right?

Ms. THOMASES. As I said, I don't remember speaking to her after that day until after she had come back to Washington.

Mr. CHERTOFF. Did she ever mention to you anything about the movement of documents into the residence from Mr. Foster's office?

Ms. THOMASES. No. I didn't know about the moving of documents out of Mr. Foster's office into the residence. That's something I only learned from press statements.

Mr. CHERTOFF. Let me ask you one last question. You indicated earlier that you have done some work, some representation work for the Clintons in connection with Whitewater. Have you done any of that work since July 1993?

Ms. THOMASES. No, I have not.

Mr. CHERTOFF. When is the last time you did that work?

Ms. THOMASES. Most of that work was done in the first quarter of 1992, as I told you.

Mr. CHERTOFF. In the campaign?

Ms. THOMASES. In the campaign.

Mr. CHERTOFF. Then who did you turn it over to?

Ms. THOMASES. To Jim Lyons.

Mr. CHERTOFF. Is it your testimony that after that, you had no more involvement in counseling them legally or politically about Whitewater?

Ms. THOMASES. I counseled them politically, and I gave them, on occasion, my best legal judgment.

Mr. CHERTOFF. How long has that counseling process continued up to the present day? Is it still going on now?

Ms. THOMASES. I would suspect—I mean, to the extent that they have asked, I have offered my opinion.

Mr. CHERTOFF. Even up to this day?

Ms. THOMASES. I would offer my opinion. I cannot remember the last time I talked to them about it.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Senator Moseley-Braun.

OPENING COMMENTS OF SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. Thank you very much, Senator Sarbanes. I, like my other colleagues, have followed the questioning, and I believe this witness has been questioned on all of the relevant issues touching on her involvement in this, and so I have no further questions at this time.

Senator SARBANES. I would have to say questioned and re-questioned, but—

Mr. BEN-VENISTE. I have nothing further, thank you.

The CHAIRMAN. We have nothing further. I want to thank both of the witnesses for their cooperation and their appearances here today. We stand in recess until tomorrow at 9:30.

[Whereupon, at 3:50 p.m., the hearing was adjourned, to reconvene at 9:30 a.m. on Wednesday, August 9, 1995.]

[Appendix supplied for the record follows:]

(1283)

NATIONAL PARK SERVICE

SUPPLEMENTAL CRIMINAL INCIDENT RECORD

JUVENILE CASE

2 SYSTEM AREA	3 WHEN DID IT OCCUR?	MO	DAY	YR	4 YEAR	5 CASE INCIDENT NUMBER
United States Park Police		0	7	20	93	9 3 0 5 0 0
6 NATURE OF INCIDENT	8 RECLASSIFICATION OF INCIDENT					
Death Investigation						

7 RESULTS OF INVESTIGATION

Interview: Lisa Foster

On 7/29/93 at approximately 1610 hours Lisa Foster, wife of Vincent W. Foster, was interviewed at the law offices of Swidler & Berlin, 3000 K Street, Northwest, Washington, D.C. The interview was conducted by Detective Peter W. Markland and Captain Charles Hume. Mrs. Foster was represented by Mr. James Hamilton. Also present, at Mrs. Foster's request, was Mr. Beryl Anthony and Mr. John Sloan.

Mr. Hamilton prefaced the interview by stating that there would be no waiver of the attorney-client privilege between himself and Lisa Foster. Prior to any disclosure of this report Mr. Hamilton requests that he be consulted. Lisa Foster then provided the following information:

-Lisa and the rest of the family were in Washington, D.C. in November 1992 and again around Easter 1993. They remained in Arkansas the remainder of the time because of school year considerations. Mr. Foster lived apart from his wife and family until June of this year when the family moved to Washington to join him.

-Pressures associated with his role at the White House were physically affecting Mr. Foster adversely. Specifically citing not being able to sleep well and telling his sister, Sheila Anthony, that he was not feeling well and was experiencing high blood pressure.

-The criticism of the President in the news media, the Travel Office investigation, the scrutiny by the press of the people from Arkansas, and even the stress of the family move to Washington in June all seemed to Lisa Foster to have a cumulative effect on Vincent Foster. He "took it all personally" and once stated to her "How did I get myself into this?".

-Vincent Foster historically dealt very well with stressful situations but was used to being in charge and in control of situations while in Arkansas, control that he lost when he took the position at the White House. He also lost the outlets for stress with the family life that he enjoyed while in Arkansas. Lisa and he talked about this and had begun an effort to rectify the situation by taking time out for themselves. They had just traveled to the eastern shore and, although it had not gone particularly well, discussed that things would take time and not change overnight.

8 WARRANT(S) <input type="checkbox"/> YES <input type="checkbox"/> NO	9 <input type="checkbox"/> LATENTS <input type="checkbox"/> PHOTOS	10 10 TECH NOTIFIED	11 INVESTIGATOR NOTIFIED	12 PAGE 1 OF 3 PAGES
13 STATUS <input type="checkbox"/> OPEN <input type="checkbox"/> SUSPENDED	CLOSED BY	<input type="checkbox"/> ARREST	<input type="checkbox"/> EXCEPTION	<input type="checkbox"/> UNFOUNDED
14 REPORTING OFFICER	BADGE/ID	DATE	15 INVESTIGATOR	BADGE/ID
			Peter W. Markland	
			16 SUPERVISOR	BADGE/ID

FORM 10-348
(2-83)UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

SUPPLEMENTAL CRIMINAL INCIDENT RECORD

JUVENILE CASE

2 SYSTEM AREA

J WHEN MO DAY YR 4 YEAR CASE INCIDENT NUMBER

United States Park Police

0 7 20 93 19 3 - 3050

5 NATURE OF INCIDENT

6 RECLASSIFICATION OF INCIDENT

Death Investigation

7 RESULTS OF INVESTIGATION

ITEM

-Vincent Foster had an extreme loyalty to the Clinton Administration and was trying to protect it. He felt he had personally failed and talked to Lisa about quitting, however, would not return to Arkansas (because of the personal humiliation he felt). Lisa Foster felt that something physical came over Vincent quickly.

-Mr. Foster's sister, Sheila Anthony, had recently provided him with the names of three psychiatrists in the event he should seek their care. It is not known whether or not he contacted any of these doctors. The Foster's family doctor, Larry Watkins, was contacted in Arkansas and he prescribed an anti-depressant, Trazodone 50 mg., for Mr. Foster. Lisa and Vincent discussed the prescription and Mr. Foster decided to start with the lowest possible dosage. Vincent Foster took one 50 mg. tablet of Trazodone on the evening of 7/19/93.

-The last time Lisa Foster saw her husband was on the morning of July 20th at approximately 08:30 A.M. when he left for work driving the Honda. She left the house shortly thereafter for an appointment and does not know whether or not he returned to the residence that afternoon. Her son may have been in the basement during the early afternoon but it would be possible for Vincent Foster to enter and exit the residence without the son realizing his presence. On that particular morning Vincent Foster's mood seemed better than it had been "in a while".

-The torn note produced by the White House counsel's office was viewed by Lisa Foster on 7/26/93 at the White House. She stated that it was, indeed, Mr. Foster's handwriting. She also stated that she had counseled him to write down his concerns and he probably did so in preparation for any upcoming investigation into his activities and decision making processes. It is Lisa Foster's opinion that the note was written 1-1½ weeks before his death. *** (Mrs. Foster and Mr. Hamilton have requested that the document be turned over to the custody of the family at the conclusion of this investigation.)

-Mrs. Foster stated that she was used to a number of guns being present at her home in Arkansas due to the different lifestyle there. She was presented with a photograph of the weapon found with Mr. Foster's body but was unable to identify it. She suggested that her sister-in law, Sharon Bowman, may be able to identify the weapon. Mrs. Bowman is an outdoors type person and would have a better knowledge of firearms owned

8 WARRANT(S)

☐ YES
☐ NO

9

☐ LATENTS
☐ PHOTOS

10 10 TECH NOTIFIED

11 INVESTIGATOR NOTIFIED

12

PAGE 2 OF 3 PAGE

13

STATUS

☐ OPEN☐ SUSPENDED

CLOSED BY

☐ ARREST☐ EXCEPTION☐ UNFOUNDED

14 REPORTING OFFICER

BADGE/ID

DATE

15 INVESTIGATOR

BADGE/ID

DATE

16 SUPERVISOR

BADGE/ID

DATE

SUPPLEMENTAL CRIMINAL INCIDENT RECORD

JUVENILE CASE :

SYSTEM AREA

United States Park Police

TAKEN
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OCCUR?

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DAY

YR

YEAR

CASE INCIDENT NUMBER

0 7 20 93 9 13 - 30500

NATURE OF INCIDENT

RECLASSIFICATION OF INCIDENT

Death Investigation

RESULTS OF INVESTIGATION

by and passed down through the Foster family. A photograph of the weapon was given to Mr. John Sloan for viewing by Mrs. Bowman in Hope, Arkansas.

Lisa Foster stated that she had never been to Fort Marcy and was unfamiliar with it's location.

The interview concluded at 1700 hours.

8 WARRANT(S) <input type="checkbox"/> YES <input type="checkbox"/> NO		9 <input type="checkbox"/> LATENTS <input type="checkbox"/> PHOTOS		10 TECH NOTIFIED		11 INVESTIGATOR NOTIFIED		12 PAGE 3 OF 3 PAGES	
13 STATUS <input type="checkbox"/> OPEN <input type="checkbox"/> SUSPENDED		CLOSED BY		<input type="checkbox"/> ARREST <input type="checkbox"/> EXCEPTION		<input type="checkbox"/> UNFOUNDED			
14 REPORTING OFFICER		BADGE/ID		DATE		15 INVESTIGATOR		BADGE/ID	
						16 SUPERVISOR		BADGE/ID	
								DATE 43	

CONFIDENTIAL

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 5/16/94

ELIZABETH BRADEN FOSTER was interviewed in the offices of her attorney, JAMES HAMILTON, who is associated with the law firm of Swidler & Berlin, 3000 K Street, N.W., Washington, D.C. ELIZABETH FOSTER, who is also known as LISA FOSTER, is the widow of VINCENT W. FOSTER, JR., former Deputy Counsel to the President, who will be referred to as FOSTER in the remainder of this report of interview. Also participating in the interview of LISA FOSTER was RODERICK C. LANKLER, Deputy Counsel, Office of the Independent Counsel, Washington, D.C. After LISA FOSTER was advised of the identities of the interviewing agents and the nature of the interview, she furnished the following information:

LISA FOSTER arrived in Washington, D.C. to set up a permanent residence for her family on June 5, 1993. After her arrival, she and FOSTER went jogging along Rock Creek Parkway in the vicinity of Dumbarton Oaks. FOSTER appeared to LISA FOSTER to be jogging at his normal pace that day. After they finished jogging, LISA FOSTER and FOSTER went to a small neighborhood store, purchased orange juice and bagels, and went home and had breakfast. LISA FOSTER recalls that day as being a day of fun and one of their best days together in recent times.

When LISA FOSTER and FOSTER still lived in Arkansas, FOSTER used to jog approximately three to four times per week. LISA FOSTER also began to play tennis at that time. LISA FOSTER and FOSTER would frequently go to a nearby track where each of them would jog at his or her own pace.

When LISA FOSTER saw FOSTER after she arrived in Washington, D.C., she believed that he appeared awful. She believed that most of the weight which FOSTER had lost by that time had been lost prior to his arrival in Washington, D.C.

On June 8, 1993, LISA FOSTER noticed that FOSTER was emotionally down and was slumped in his chair just as his father had been when his father was ill. LISA FOSTER recalls that FOSTER always was worried and stressed. FOSTER told LISA FOSTER

Investigation on 5/9/94 at Washington, D.C. File # 29D-LR-35063

Date dictated 5-16-94

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CONFIDENTIALContinuation of FD-302 of ELIZABETH BRADEN FOSTER, On 5/9/94, Page 2

that nothing at the White House was going right and he mentioned the example of the ZOE BAIRD nomination.

LISA FOSTER recalls that FOSTER did go jogging on Monday, July 19, 1993 but did not go jogging on July 20, 1993.

FOSTER complained to LISA FOSTER that he was suffering from insomnia, but he did not want to take sleeping pills because he was afraid that he would become addicted to them. FOSTER would get up in the morning and say to LISA FOSTER that he had not slept at all. FOSTER's typical work day began at 8:00 or 8:30 a.m. and continued until 9:30-10:00 p.m.

LISA FOSTER is aware that FOSTER had his blood pressure checked at the White House infirmary on or about July 16, 1993. FOSTER had complained to LISA FOSTER that his heart had been pounding. LISA FOSTER recalls that the blood pressure reading taken on FOSTER on July 16, 1993 did not sound particularly high. FOSTER told her that the White House medical personnel had taken his blood pressure again the same day, approximately ten minutes after the first reading. LISA FOSTER recalls that the initial blood pressure reading was approximately 160/100 and that the later reading was approximately 140/90. After FOSTER related the results of these blood pressure readings to LISA FOSTER, she told him that she would call DR. LARRY WATKINS, their family physician back in Little Rock, Arkansas. LISA FOSTER is not aware of any other time when FOSTER may have gone to have his blood pressure checked.

LISA FOSTER is not aware of FOSTER ever having been treated for depression previously or having had medication for depression prescribed for him.

When asked why she and her son called FOSTER's office at the White House on several occasions to ask about FOSTER's well-being, LISA FOSTER responded that she used to call her

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Continuation of FD-302 of ELIZABETH BRADEN FOSTER . On 5/9/94 . Page 3

husband when he worked at the Rose Law Firm all the time, especially if she wanted money. VINCENT FOSTER was very quiet, and LISA FOSTER may have called his secretary just to get a better feel for his condition and state of mind. LISA FOSTER believes that her son, VINCENT W. FOSTER, III, may have called BERNARD NUSSBAUM, Counsel to the President, to confirm whether NUSSBAUM would be speaking to a group of legal aides who were working on Capitol Hill. VINCENT W. FOSTER, III was working for Arkansas Senator DALE BUMPERS at the time and was interested in trying to attend such a speech by NUSSBAUM. LISA FOSTER does not specifically recall any other occasions when she may have called FOSTER's office.

When LISA FOSTER was asked whether FOSTER ever experienced anxiety as a component of his depression, she responded by recalling the night that ZOE BAIRD withdrew from consideration to become Attorney General of the United States. LISA FOSTER recalls that FOSTER came to bed at approximately 2:30 a.m. and he was sweating profusely and just sick. FOSTER felt that everyone was criticizing him, even at home. FOSTER did not enjoy being in the public eye. As an indication of FOSTER's anxiety, LISA FOSTER cites the fact that he told her that he didn't have time to do the taxes. LISA FOSTER recalls that he began to start more of his sentences with the phrase "I just can't handle...." While the FOSTER family was still living in Little Rock, if FOSTER became anxious, he would just go out to his swimming pool in the backyard and work by the pool, particularly if there was a trial approaching. FOSTER was very intense. If an upcoming trial involved a major case, then preparation for that trial would be all that FOSTER would do. FOSTER had a one-track mind when he was preparing for or engaged in a trial. Once FOSTER began working at the White House, there were no breaks in his effort and also no successes. FOSTER was used to always winning, and LISA FOSTER does not recall any instances of FOSTER losing before he joined the administration.

FOSTER has had panic attacks in the past and LISA FOSTER thinks that he had one at least five years ago. At that time, FOSTER told LISA FOSTER that his heart was acting up. FOSTER had a heart monitor attached to him for 24 hours but no abnormalities were found.

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LISA
FOSTER believes that FOSTER's commencement speech at the University of Arkansas Law School is a very good example of how FOSTER appeared when he was suffering such an anxiety attack. LISA FOSTER recalls that he appeared very stiff while making that address. LISA FOSTER recalls other occasions when FOSTER appeared to be suffering from some sort of panic attack.

The other occasions when FOSTER sounded choked up and tense were when the Branch Davidian complex near Waco, Texas had burned, and the occasion of the issuance of the White House report on the Travel Office affair in which FOSTER was reprimanded.

LISA FOSTER does not recall any incidents in which FOSTER was hospitalized for physical or mental ailments. She recalls that FOSTER once cut his chin and received stitches as an outpatient. She cannot recall any other instances when FOSTER received care at a hospital.

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LISA FOSTER did have contact with DR. LARRY WATKINS subsequent to FOSTER's death.

She also asked DR. WATKINS, "Could it have been the pill?" DR. WATKINS responded to LISA FOSTER that the pill could not have been the cause of the suicide and he further stated that FOSTER's depression must have been acute. DR. WATKINS is an internist who provided full physical examinations to both LISA FOSTER and FOSTER every two years.

In speaking with DR. WATKINS, LISA FOSTER learned that FOSTER had called DR. WATKINS and told him that he thought he was fighting depression. DR. WATKINS related to LISA FOSTER that he had then called in a prescription for an anti-depressant drug. LISA FOSTER did not know ahead of time that FOSTER was going to call DR. WATKINS, and she did not overhear the conversation between FOSTER and DR. WATKINS.

When LISA FOSTER was asked whether it would have been uncharacteristic of FOSTER to reach out to someone regarding a problem such as depression, she replied that FOSTER would have reached out if he were really scared or were at home rather than at the White House. During one conversation, FOSTER told LISA FOSTER that SHEILA (FOSTER's sister, SHEILA ANTHONY) says sometimes that "it" is chemical. FOSTER did not explain to LISA FOSTER what he was referring to when he talked about "it" or "this thing." LISA FOSTER did not understand what his reference meant when he referred to it as being chemical. LISA FOSTER offered to call a doctor for FOSTER but he said that he would make the call.

FOSTER had a prescription for a sleeping pill called Restoril (phonetic)

Prior to FOSTER's death, SHEILA ANTHONY never mentioned depression to LISA FOSTER in relation to FOSTER.

When asked whether FOSTER had ever approached LISA FOSTER for help in dealing with his problem with depression, LISA FOSTER recalls that he mentioned his depression to her on

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CONFIDENTIALContinuation of FD-302 of ELIZABETH BRADEN FOSTER On 5/9/94, Page 6

approximately July 16, 1993. LISA FOSTER then arranged to go away for the weekend with FOSTER to the Tidewater Inn on the Eastern Shore of Maryland. LISA FOSTER made all the arrangements for the weekend and asked FOSTER to be home by 3:00 p.m. that Friday, which was July 16, 1993. Instead, FOSTER arrived home at approximately 4:00 p.m., and she and FOSTER had to drive through terrible traffic to reach the inn. Because FOSTER appeared to be under stress to her, LISA FOSTER offered to drive. FOSTER agreed to have her drive, but there was no opportunity to pull over and change drivers so FOSTER ended up driving the entire way to the Tidewater Inn.

LISA FOSTER has no knowledge of any available records which might indicate that her husband had previously received psychiatric counseling.

FOSTER did not experience either stress or depression while he was studying in law school. FOSTER never had to study at night because he was able to do his studying during the morning hours prior to class. After rising in the morning and driving LISA FOSTER to her place of employment, FOSTER would return home and study.

FOSTER did not attend his graduation from law school for a number of reasons. FOSTER graduated during the middle of the school year, i.e., in the month of January. Because of the timing of his graduation and because FOSTER had already begun work at the Rose Law Firm in Little Rock, Arkansas, FOSTER would have had to take off time from work in order to attend graduation. Other reasons why the FOSTERS did not attend the graduation were that the trip back to Fayetteville, Arkansas would have involved significant expenses and LISA FOSTER was pregnant at the time. LISA FOSTER recalls that the graduation ceremony was nothing special because it was conducted as part of the same ceremony held for other schools within the University.

LISA FOSTER has many copies of the text of FOSTER's commencement address to the University of Arkansas School of Law. She also has a copy of the videotape of that address by FOSTER. The text of FOSTER's speech is contained in the most recent copy of the University of Arkansas Law Review.

During the last few months of his life, FOSTER was reading such books as The Making of a President, Ross Perot's

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book, a book entitled Putting People First, and other books, titles unrecalled, on the subject of ethics. LISA FOSTER is unable to recall the titles of any of the books which FOSTER may have been reading for pleasure just prior to his death.

LISA FOSTER and her family did employ housekeepers in their residences in both Little Rock and Washington. In Little Rock, LISA FOSTER employed a housekeeper for approximately 22 years. In Washington, LISA FOSTER employed a woman named [redacted] who came to clean the FOSTER residence once a week. [redacted] had worked for the tenants who had resided previously in the FOSTER house. LISA FOSTER does not believe that [redacted] ever saw FOSTER because he typically left for work prior to her arrival at the house and he always returned home after [redacted] had already departed.

LISA FOSTER is not aware of any personal or family reason which would account for FOSTER researching medical malpractice issues. First Lady HILLARY RODHAM CLINTON had asked FOSTER to write the malpractice section of the newly proposed health care plan. In addition, one of FOSTER's first legal cases had been a case involving medical malpractice.

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LISA FOSTER is not aware of any indication, nor does she suspect, that her husband had become aware of anything illegal or highly damaging to either the CLINTONS or the White House which would have presented him with irreconcilable pressures. LISA FOSTER notes that FOSTER never told her anything about his clients.

FOSTER never expressed any concern to LISA FOSTER about either Whitewater or Madison Guaranty Savings & Loan. LISA FOSTER had never even heard of either of these entities at that point in her life.

When asked to furnish an opinion as to what FOSTER may have been working on that caused him stress or might explain his condition of depression, LISA FOSTER responded that the Travel Office fiasco may have been the source of the stress. She noted that if the Travel Office had been the only difficulty facing FOSTER, it would not have been so bad. At one point, FOSTER called the family together and warned his family that the next six months might be particularly difficult. Toward the end of his life, FOSTER had no sense of joy or elation at work. The Branch Davidian incident near Waco, Texas was also causing him a great deal of stress. LISA FOSTER believes that FOSTER was horrified when the Branch Davidian complex burned. FOSTER believed that everything was his fault. On such issues as the ZOE BAIRD nomination and gays in the military, it seemed that the White House Counsel's Office was not doing a particularly good job, although LISA FOSTER felt that the attorneys themselves were doing good work. FOSTER was extremely fond of NUSSBAUM. If either President CLINTON or NUSSBAUM was being criticized, FOSTER felt that he was also being criticized. FOSTER was very happy about the nominations of JANET RENO as Attorney General of the United States and RUTH BADER GINSBURG as a Supreme Court Justice.

At this point in the interview, HAMILTON interjected that he sat next to Justice GINSBURG when she was first nominated for her position, and he noted that FOSTER was very touched by Justice GINSBURG's speech.

LISA FOSTER stayed home and did not attend the nomination ceremony for Justice GINSBURG.

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LISA FOSTER is not exactly aware of what role her husband played in the firing of the seven individuals from the White House Travel Office. FOSTER was distressed because he felt that if he had spoken first with WILLIAM KENNEDY, who was also an attorney in the White House Counsel's Office, then the Federal Bureau of Investigation would not have been called into the case. However, no one heeded FOSTER's advice on this matter.

LISA FOSTER is aware that FOSTER was compiling a list of attorneys to represent him regarding the White House Travel Office matter. FOSTER wanted to have an attorney represent him because he did not have time to do his work at the White House and prepare a defense for himself. LISA FOSTER recalls that Senator DOLE had written a letter on July 15, 1993 requesting a Congressional investigation of the Travel Office matter. VINCENT W. FOSTER, III had attended a Senate Judiciary Committee meeting when an investigation of the Travel Office matter was called for but the motion to conduct such an investigation was tabled. VINCENT FOSTER, III told LISA FOSTER about the proposal for Congressional hearings, but she did not think that it was a big deal.

LISA FOSTER does not think that FOSTER contacted any of the attorneys on the list of attorneys which had been furnished to him by BERYL ANTHONY. LISA FOSTER is aware that FOSTER contacted her attorney, JAMES HAMILTON, as well as attorney JAMES LYONS and, although she was not privy to the conversations, she believes that these conversations related to the Travel Office matter.

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LISA FOSTER's daughter, LAURA FOSTER, was the primary driver of the Honda automobile which was found at Fort Marcy Park, Virginia on July 20, 1993. The Honda automobile belonged to LAURA FOSTER and also to one of LISA FOSTER's sons. The son and daughter shared the automobile. LAURA FOSTER had used the Honda while she was attending Vanderbilt University and then had driven it to Washington. The Honda automobile was the only car which FOSTER and LAURA FOSTER had with them in Washington until LISA FOSTER arrived with the other family members and with the Lexus automobile owned by their family.

It was not only typical for FOSTER to drive the Honda to work at the White House, it was imperative.

The contents found in the Honda on July 20, 1993, e.g., the cigarette pack, beer cans, and corkscrew, belonged to LISA FOSTER's son. FOSTER himself did not smoke. FOSTER's sons had gone to the beach the weekend preceding July 20, 1993, and the refuse from the weekend was still in the passenger compartment of the Honda when it was searched by police at Fort Marcy Park.

The Honda is no longer in the possession of LISA FOSTER because she sold the car to her brother-in-law, who in turn is leasing the car to her brother in Nashville, Tennessee.

LISA FOSTER describes the color of the Honda as taupe or grayish. She further describes it as a light color.

FOSTER had not made specific plans for the weekend which followed his death. He had spoken with LISA FOSTER about going away for that weekend and about coming home early from work so they could get an early start on the weekend. LISA FOSTER had talked to him about trying to go away every weekend. They had

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spoken about trying to go to Pennsylvania the following weekend but had not made any reservations.

There were no domestic problems between LISA FOSTER and FOSTER during the entirety of their twenty-five year relationship.

On the evening of July 19, 1993, LISA FOSTER cooked dinner at home. When FOSTER returned home from work, he came into the house and smiled at LISA FOSTER while saying that a quarter to eight was not bad. LISA FOSTER responded to him that she was thinking that he would be home at 6:30 or 7:00 p.m. That night, FOSTER received a call from President CLINTON, who invited FOSTER to come to the White House to watch a movie. When FOSTER turned down the invitation from the President, LISA FOSTER was happy. She prepared scallops for all of the family members except for her son BRUGH, who was eating spaghetti.

FOSTER did not mention any conversations from earlier in the day of July 19, 1993 which might have disturbed him.

LISA FOSTER has some knowledge of three letters which were sent out by FOSTER from his office on July 19, 1993. LISA FOSTER is aware of a letter from FOSTER to his mother regarding some leases for mineral rights. LISA FOSTER only saw this letter after FOSTER's death because, as a result of FOSTER's mother signing the letter, LISA FOSTER inherited the mineral rights. LISA FOSTER does not recall exactly how she saw these mineral leases. One of the remaining two letters may have been for payment of a life insurance premium, but LISA FOSTER does not recall whether she or FOSTER mailed this letter.

FOSTER had never spoken to LISA FOSTER about visiting Fort Marcy Park in the past, and she had never heard of the park prior to her husband's death.

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LISA FOSTER does not know whether VINCENT FOSTER ever visited Fort Marcy Park prior to the day of his death but she doubts it.

LISA FOSTER has no idea what her husband did after he left the White House on July 20, 1993. She has checked both gas receipts and credit card receipts, but no purchases or other clues have been identified.

LISA FOSTER had no contact, including telephone calls, with her husband after he left their home on the morning of July 20, 1993. LISA FOSTER recalls one unusual event that morning which was that FOSTER asked her what she was going to be doing that day. It was uncommon for FOSTER to ask her about her plans, and it was also memorable to her that he asked because she was unusually busy that day.

LISA FOSTER is not aware of FOSTER returning home after leaving his office at the White House on July 20, 1993. It is her opinion that he did not return home on that date.

LISA FOSTER is not aware of any particular local spots frequented by FOSTER, such as restaurants or bars, which might assist investigators in attempting to trace FOSTER's activities on July 20, 1993. A Washington restaurant, La Tomate, was the only place where FOSTER would eat out during the business day.

On July 20, 1993, LISA FOSTER played tennis at approximately 8:30 a.m. At 11:45 a.m., she attended a meeting relating to multiple sclerosis. Prior to attending the meeting, LISA FOSTER woke her son so that he could drive her to the meeting. DONNA KAY MCLARTY had also invited LISA FOSTER out. LISA FOSTER had been in Washington for approximately six weeks, but she and MCLARTY had not seen each other much, so they agreed to go to a restaurant at the Four Seasons Hotel for lunch. At approximately 3:30 p.m., LISA FOSTER and MCLARTY took a taxi back to FOSTER's house. From there, LISA FOSTER and MCLARTY went to the MCLARTY residence where their respective sons met with each other. At approximately 5:00 p.m., LISA FOSTER returned home and called the White House to speak to her husband. LISA FOSTER thought that it was NANCY HEMREICH's week to be at the office, but she was told by DEBORAH GORHAM that HEMREICH's week would be the following week. GORHAM told LISA FOSTER that FOSTER was unavailable to come to the phone.

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FOSTER had never spoken with LISA FOSTER before about suicide and he had never attempted suicide before. LISA FOSTER believes that her husband took his life because he was so terribly depressed.

LISA FOSTER has no doubts that her husband took his own life and she had no such doubts on the night of July 20, 1993.

In terms of other drugs which may have been prescribed for FOSTER in the past, LISA FOSTER is aware of the sleeping pill Restoril having been prescribed. She also recalls that an antibiotic was prescribed for FOSTER in approximately December 1992. LISA FOSTER recalls that Feldene was prescribed for treatment of FOSTER's tennis elbow.

LISA FOSTER is aware that her husband took one 50 milligram dose of Trazadone on the evening of July 19, 1993 because she told her husband to take one pill and she watched him take it. She does not know if he took any sleeping pills on that evening. On the morning of July 20, 1993, FOSTER told LISA FOSTER that he did not go out for a jog because it would take him too long to cool off. LISA FOSTER notes that her house has only one bathroom for such a large family. She notes further that, due to her relatively early departure from home on July 20, 1993, there were several family members attempting to use the single bathroom during the same period of time.

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At this point in the interview, LISA FOSTER was asked to examine a pair of eyeglasses which had been found in Fort Marcy Park on July 20, 1993. LISA FOSTER held the glasses, examined them, and then stated that the eyeglasses appeared to be those of her husband. LISA FOSTER noted that the tips of the stems of the eyeglasses had bite marks on them, which was an observation consistent with one of her husband's habits. FOSTER had frequently chewed on the tips of his eyeglasses as a nervous habit.

LISA FOSTER then examined a revolver which had been brought to the interview by the interviewing agents. FOSTER examined the revolver, which had also been found at Fort Marcy Park on July 20, 1993, and stated that she believed it may be a gun which she formerly saw in her residence in Little Rock, Arkansas.

LISA FOSTER then examined a photocopy of a handwritten note which has previously been identified as having been written by her late husband. LISA FOSTER believes that the original note was written on or about July 11, 1993. LISA FOSTER is not entirely certain of this date and believes that the note was written sometime during the period between July 4 and July 20, 1993. She believes that the note was written by FOSTER in their Washington residence on a day when there were a number of young people in her house. Her son was working as a Senate aide and there were a number of other aides visiting him on that day. LISA FOSTER invited FOSTER to go with her to the store, but he declined to accompany her. FOSTER was upstairs in bed, alternately trying to sleep and work. LISA FOSTER suggested to FOSTER that he write down everything that "they" did wrong. She suggested to FOSTER that he go on the offensive and not continue to take responsibility for every mistake which was made in the White House. FOSTER agreed with LISA FOSTER's suggestion, and he sat up in bed and appeared energized. FOSTER told LISA FOSTER that he had not resigned yet, and he said that he had already written his opening argument in his defense. LISA FOSTER believes that the torn note which was found was actually FOSTER's opening argument in the event he had to testify before Congress.

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Although LISA FOSTER did not view or read the note on the day that FOSTER appeared to be energized by her remarks, she is confident that the comments written in the note were written on that same day. LISA FOSTER knows that FOSTER was upset about the Federal Bureau of Investigation (FBI) being called in regarding the Travel Office matter, but she does not believe that FOSTER believed that the FBI had lied. People know that representatives of the media were getting deals through the White House Travel Office. LISA FOSTER is aware that people knew of these deals, but she herself knew nothing about FOSTER's remarks in the note pertaining to the Republicans or the usher's office. LISA FOSTER believes that FOSTER was concerned about excessive costs being incurred by the usher's office, but FOSTER never discussed these matters with her.

On Tuesday night, July 13, 1993, FOSTER spoke with LISA FOSTER about resigning. LISA FOSTER encouraged him to stay in his position in the White House Counsel's office. She advised him that Congress would take a recess in August 1993. LISA FOSTER then suggested to FOSTER that he should stay in his current post until Christmas of 1993. LISA FOSTER understood clearly that FOSTER was speaking about the Travel Office when he was speaking of his depression and his concerns.

LISA FOSTER is aware of the whereabouts of some ammunition which was kept at the FOSTER residence in Little Rock prior to her husband's death. She recalls finding a number of shotgun shells in the top drawer of her dresser. She also recalls that there were a number of shotgun shells kept in a closet. In searching her house, LISA FOSTER found a number of 20 gauge and 12 gauge shotgun shells, some .22 caliber ammunition, and possibly some small handgun ammunition. LISA FOSTER does not recall seeing any such ammunition at her house in Washington, D.C.

LISA FOSTER believes that she may have seen the handgun which she examined previously during the interview at her residence in Washington. LISA FOSTER recalls that as she was packing her belongings in Little Rock in preparation for coming to Washington, D.C., she found a handgun inside a travel trunk which had been packed by FOSTER prior to his departure for Washington. Specifically, as LISA FOSTER was packing in Little Rock, she came across a silver-colored gun, which she then packed in with her other property. When LISA FOSTER unpacked the gun in

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Washington, FOSTER saw the gun and commented on it. LISA FOSTER had not had a prior conversation with FOSTER about bringing a gun to Washington, D.C., but she argued with FOSTER when the gun was unpacked. LISA FOSTER told FOSTER that she did not want any guns in her house in Washington.

LISA FOSTER is not aware of any photographs which may be kept in Arkansas which would depict the guns owned by FOSTER's late father. She is only aware of snapshots of family members going hunting.

LISA FOSTER is not aware of any records from the elder MR. FOSTER's estate which might describe the firearms he had owned. She is aware of a handwritten note from the elder MR. FOSTER regarding the disposition of his property after he passed away. According to this note, all of the elder MR. FOSTER's guns were left to FOSTER and a diamond was left to LISA FOSTER. After the funeral for FOSTER's father, FOSTER went down to his father's house and retrieved the guns. LISA FOSTER believes that there were approximately three to five handguns included in the guns retrieved by her husband. She believes that her husband obtained all of the guns which were left by FOSTER's father.

LISA FOSTER does not know where her husband kept the guns left to him by his father while the FOSTERS were still living in Little Rock.

LISA FOSTER believes that the shotguns from the estate of the elder MR. FOSTER are currently in the possession of her brother-in-law, who is the husband of her sister. SHARON BOWMAN, FOSTER's sister, has one handgun. LISA FOSTER believes that BERYL ANTHONY has one of the handguns from the estate here in Washington, D.C., but she has not asked ANTHONY that specific question.

FOSTER himself did not like guns. FOSTER's father had given guns to LISA FOSTER's sons, which displeased LISA FOSTER. LISA FOSTER also knows that FOSTER kept a gun in a closet in their home in Washington, D.C. LISA FOSTER was aware of the location of one gun inside her residence in Washington and she found that gun still in its usual location on the night of July 20, 1993. The gun which she found on that date was not the silver gun which she had earlier found in the trunk in Little Rock. LISA FOSTER believes that the gun found at Fort Marcy Park

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may be the silver gun which she brought up with her other belongings when she permanently moved to Washington. LISA FOSTER does not know with certainty, but she suspects that there were some bullets at the house in Washington, D.C.

Sometime within the last two weeks prior to July 20, 1993, LISA FOSTER told FOSTER to remove the guns from their house in Washington. FOSTER told LISA FOSTER not to remark about the guns in front of the boys. LISA FOSTER believes that she may have told her husband twice during that time to remove the guns, but she never checked to see if the guns had actually been removed.

LISA FOSTER assumes that ammunition was given to her husband in conjunction with his receipt of the guns from his father's gun collection, but she does not know for certain. She never knew FOSTER to buy any ammunition except for shotgun shells when he went hunting.

To the best of LISA FOSTER's knowledge, FOSTER never carried a handgun in his automobile. She never knew FOSTER to carry a gun with him to work. FOSTER parked his automobile in slot 16 on Executive Boulevard West whenever he was at the White House. LISA FOSTER knows that the trunks of vehicles are checked when the vehicles are driven onto the White House grounds. When not in use, the Honda was typically parked on the street adjacent to the FOSTER residence while the FOSTER family's Lexus was parked in a space behind their house.

LISA FOSTER believes that the guns which were brought by her family from Little Rock to Washington were transported on the moving van with their other belongings.

LISA FOSTER does not know where her husband might have obtained the two loose bullets which were discovered in the handgun found at Fort Marcy Park.

LISA FOSTER is not aware of any background information regarding her husband's possession of guns which could assist in tracing the gun found in his hand at Fort Marcy Park. SHARON BOWMAN told LISA FOSTER that FOSTER's father kept a gun by his bed while he was still living, and LISA FOSTER believes that that gun may be the same revolver she was shown by the interviewing agents.

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BOWMAN told LISA FOSTER that FOSTER's father kept a gun by his bed while he was still living, and LISA FOSTER believes that that gun may be the same revolver she was shown by the interviewing agents.

FOSTER's father served in the United States Navy during the World War II period and may have been stationed in California.

It is difficult for LISA FOSTER to believe that FOSTER may have come home on July 20, 1993 to get a gun.

LISA FOSTER still remembers her last contact with FOSTER on the morning of July 20, 1993 in their kitchen. She recalls that FOSTER was standing very stiffly in the kitchen prior to departing for work. LISA FOSTER now believes that he may have had the gun with him in his briefcase at that time.

LISA FOSTER believes that FOSTER was suffering from a major depression which was brought about by working too hard for such a long period of time away from his family. She believes that no one loved his children more than her husband.

FOSTER was unable to attend the ceremony in which the Arkansas Bar Association named him the Lawyer of the Year because he had to go to Boston, Massachusetts that same day to interview Judge STEPHEN BREYER. Judge BREYER was a candidate for a vacancy on the United States Supreme Court, but he was bedridden as a result of a traffic accident.

At this point in the interview, Attorney JAMES HAMILTON interjected that he had traveled to Boston to interview Judge BREYER with FOSTER on that occasion.

LISA FOSTER believes that FOSTER thought he would be able to attend the Arkansas Bar Association ceremony up until the very last minute. Both LISA FOSTER and FOSTER were very upset

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that they were unable to attend. She believes that his inability to attend the ceremony would have weighed very heavily on FOSTER and would have caused him to feel embarrassed before his peers in Arkansas.

At the conclusion of the interview, HAMILTON, on behalf of LISA FOSTER, again asked that the original handwritten note which had been torn up be turned over to LISA FOSTER at the conclusion of the investigation. HAMILTON also reiterated his request that a photograph of the note not be released by the Office of the Independent Counsel should such a request be received under the Freedom of Information Act.

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SUSAN THOMASES PHONE CONTACTS ON JULY 22, 1993

TIME	CALL/MESSAGE
8:01 a.m.	Page to Nussbaum
9:00 a.m.	Message Slip to Maggie Williams
10:48 - 10:51 a.m.	Call to COS
11:04 - 11:10 a.m.	Call to COS of First Lady - Maggie Williams ¹
11:11 - 11:14 a.m.	Call to COS
11:16 - 11:17 a.m.	Call to COS
11:37 - 11:48 a.m.	Call to COS of First Lady - Maggie Williams
11:50 - 11:54 a.m.	Call to COS of First Lady - Maggie Williams
5:13 - 5:22 p.m.	Call to COS of First Lady - Maggie Williams
5:23 - 5:26 p.m.	Call to Bruce Lindsey
7:12 - 7:13 p.m.	Call to Rodham Arkansas residence

¹ The White House has provided a telephone extension for Margaret Williams and Evelyn Lieberman that corresponds to the extension called by Ms. Thomases (456-6266) in the First Lady's Office.

Ms. Thomases has testified that she spoke with Ms. Williams on July 21-22, 1993. (Thomases dep. p. 109) Both Ms. Williams and Ms. Lieberman testified that they do not recall speaking with Ms. Thomases by telephone on July 22, 1993. Ms. Williams testified that other individuals could be reached at this extension. The White House has subsequently provided the Committee with additional information regarding individuals who could be reached at extension 456-6266 in July 1993. The White House has represented to the Committee that none of those individuals recalls speaking with Ms. Thomases on July 22.

Please do not leave any
questions unanswered.

Consider

FINANCIAL STATEMENT

To: PERRY COUNTY BANK
PERRYVILLE, ARKANSASName Bill Clinton and Hillary Rodham Clinton Address 1802 Center St. Little Rock, Ark. 72

For the purpose of procuring and maintaining credit from time to time in any form whatsoever with the above named Bank for all
 and demands against the undersigned, the undersigned submits the following as being a true and accurate statement of my financial
 condition on the following date, and agree that ~~the undersigned hereby and without any reservation of any kind, and unless the Bank is so~~
 all items ~~and unless the Bank is so~~
 and it may continue to rely upon the statement herein given as a true and accurate statement of the financial condition of the as
 signed as of the date of issuance.

(Month) May (Day) 21 19 4

ASSETS			LIABILITIES		
Cash on hand and in Banks	280	000 00	Notes payable to Banks		
U. S. Gov. Securities—see schedule			Secured	50	000 00
Listed Securities—see schedule	416	000 00	Unsecured		
Unlisted Securities—see schedule			Notes payable to relatives		
Accounts and Notes Receivable			Notes payable to others		
Due from relatives and friends			Accounts and bills due		
Accounts and Notes Receivable			Accrued taxes and interest		
Due from others—good			Other unpaid taxes		
Accounts and Notes Receivable			Mortgages payable on Real		
Doubtful			Estate—see schedule	90	000 00
Real Estate owned—see schedule			Chattel Mortgages and other		
Real Estate Mortgages owned			Liens payable		
Automobiles	10	000 00	Other debts—itemize		
Personal property	70	000 00			
Other assets—itemize					
Cash Value Life Insurance					
			TOTAL LIABILITIES	130	000 00
			NET WORTH	226	000 00
TOTAL ASSETS	356	000 00	TOTAL LIAB. & NET WORTH	356	000 00

SOURCE OF INCOME		PERSONAL INFORMATION	
Salary	\$ 135 000	Business or occupation	Governor Age 43
Bonuses and commissions	\$		Attorney 42
Dividends & interest	\$ 25 000	Partner or officer in any other venture	
Real Estate income	\$	Base Law Firm	
Other income—itemize	\$ 25 000	Married Yes Children 1	
Directors' & speech fees	\$	Single Dependents	
TOTAL	\$ 185 000		

CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser or cosigner	\$	Are any assets pledged?	NO
On leases or contracts	\$	Are you defendant in any suits or	
Legal claims	\$	legal actions?	NO
Provision for Federal Income		Personal bank accounts carried at	
Taxes	\$	Worthen Bank	
Other special debt	\$	Have you ever taken bankruptcy? Explain:	
			NO

(SCHEDULES ON REVERSE SIDE)

DKSN0001

SCHEDULE OF U. S. GOVERNMENTS, STOCKS AND BONDS OWNED					
Description	In name of	Market value			
900 Shares of Wal-Mart Stores	William Paulston Clinton	40,000			
300 Shares of TCBY	William Paulston Clinton	6,000			
SCHEDULE OF MORTGAGES OWNED					
Description of property covered	Date of acquisition	In name of	Maturity	Amount	
SCHEDULE OF REAL ESTATE OWNED					
Description of property and improvements	Date of acquisition	Title in name of	Cost	Market value	Mortgage Amount Maturity
Condominium in Little Rock	1988	Bill Clinton	80,000	80,000	80,000 2003
SCHEDULE OF LIFE INSURANCE CARRIED					
Amount	Name of Company	Beneficiary	Cash surrender value	Loan	
500,000	Northeastern Mutual Life	Bill Clinton	0	0	
500,000	"	William Paulston Clinton	0	0	
GIVE NAMES OF BANKS OR FINANCE COMPANIES WHERE CREDIT HAS BEEN OBTAINED					
Name			High credit	Basis	

THE UNDERSIGNED CERTIFIES THAT BOTH SIDES HEREOF AND THE INFORMATION REPORTED THEREIN HAS BEEN CAREFULLY READ AND IS TRUE AND CORRECT.

May 21, 1996

19

William Paulston Clinton

Signature

DKSN000179

4-07-1992 16:22 FROM SWIDLER & BERLIN TO 00915001#1501J724541 P.02

Bill Clinton FOR PRESIDENT

April 6, 1992

Jim

VIA HAND DELIVERY

Kim L. Bright-Coleman
Associate General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Amended SF-278 for Presidential
Candidate William J. Clinton

Dear Ms. Bright-Coleman:

Enclosed for filing is an amendment to Schedule C of SF-278, the Public Financial Disclosure Report, previously submitted by Presidential Candidate William J. Clinton.

The amendment reports that Governor and Mrs. Clinton are personal guarantors of a mortgage loan to Whitewater Development Company, Inc., a real estate development corporation of which they are shareholders.

Cordially yours,

Bruce R. Lindsey
Bruce R. Lindsey
Campaign Director

Enclosure

DKSN000180

Turner 11/24
 Lyon, Lindsay, Tisdale, Haislett
 [John Rogers
 Changi Mills]

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INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

WEDNESDAY, AUGUST 9, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE THE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 10:00 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. I would just like to make an announcement.

We are scheduled to start at 9:30 a.m. We are going to delay that, why don't we say, until 10:00 a.m. The reason for the delay is that a vote is starting within the next 5 minutes.

Mr. Nussbaum, good to see you. As I was saying, while we were scheduled to start at 9:30 a.m., the reason the other Senators are not here is because a vote will start within the next 5 minutes. That vote will take at least 15 minutes to complete, plus they have another 5 minutes, so I'm going to suggest that we be prepared to start at 10:00 a.m.

[Recess.]

The CHAIRMAN. The Committee will come to order.

Mr. Nussbaum, would you stand for the purposes of the oath.

SWORN TESTIMONY OF BERNARD W. NUSSBAUM, FORMER COUNSEL TO THE PRESIDENT OF THE UNITED STATES

The CHAIRMAN. Mr. Nussbaum, I understand that you have a prepared statement that you would like to give to the Committee for the record, and we would be prepared to receive your testimony on it at this point.

Mr. NUSSBAUM. Thank you, Mr. Chairman.

Mr. Chairman, Senator Sarbanes, and Members of the Committee——

The CHAIRMAN. May I interrupt at this moment? Would you have a copy so we can have copies made for the Committee?

Mr. NUSSBAUM. Yes, we have copies, and we'll——

The CHAIRMAN. If you could just wait a moment, we'll have some copies made. I'm not going to hold you up, but if your counsel could get a copy, we'll run some off.

(1201)

Mr. FITZPATRICK. We have copies.

The CHAIRMAN. Pardon me?

Mr. FITZPATRICK. We have copies. They're coming.

Mr. NUSSBAUM. Copies are coming, Mr. Chairman.

The CHAIRMAN. Why don't you proceed as long as we have them.

Mr. NUSSBAUM. Thank you.

Mr. Chairman, let me say I appreciate the opportunity to deliver this opening statement. I should tell you at the outset, and I know this will not surprise you, since we have all met before, that I intend to respond in detail to each of the issues and to all of the innuendoes raised in this hearing room during the past several weeks. I intend to do so with facts, not fantasies, and with a discussion of how a lawyer is obliged to act with respect to a client's confidences. So let me begin.

As you know, I was Counsel to the President of the United States from January 20, 1993 until April 5, 1994. Vincent Foster was my Deputy. He was a superb lawyer, an individual of great integrity, and a magnificent human being. Vince was the co-senior partner of the little law firm we created in the White House, the White House Counsel's Office. It is hard to imagine having a finer colleague. I miss him. I miss him a great deal. So do so many others who knew him well.

This Committee is looking into the following question: Did improper conduct occur regarding the way in which White House officials handled documents in Mr. Foster's office following his death? I have an answer to that question, Mr. Chairman. It is a categorical no. There was nothing improper in the way White House officials handled documents in Vince Foster's office following his death.

As this Committee has heard, there were differences of opinion with the Justice Department as to how a search of Vince's office for a suicide note or similar such documents should be conducted. That office contained numerous confidential files, as well as sensitive documents, such as briefing reports on Supreme Court nominees and other high Administration officials.

Before any review by me of the documents in that office, Justice Department officials wanted to read a part of each document. They wanted to decide if a document was privileged or relevant to their search. That is perhaps understandable from their institutional point of view, which Philip Heymann defined here as "maintaining the credibility of Federal law enforcement."

As White House Counsel, I was also concerned with maintaining the credibility of Federal law enforcement, but I was bound to act in accordance with my obligations as a lawyer, and I did not believe that doing so, that acting accordance with my obligations as a lawyer would undermine the credibility of Federal law enforcement. It was my ethical duty as a lawyer and as White House Counsel to protect a client's information and confidences and not to disclose them without a prior review by me.

It was my duty to preserve the right of the White House of this President and future Presidents to assert executive privilege, attorney-client privilege, and work product privilege. It was my duty to do nothing that could result in an inadvertent waiver of these privileges. It was my duty to protect the confidentiality of other

matters as well, including sensitive Government documents in that office. These were solemn professional obligations that I was sworn as a lawyer to uphold.

The fact that law enforcement agents wanted to see if there was a suicide note in Vince's office before I could review the documents in that office did not give me the right to ignore these obligations and throw open the door to that office. It did not give me the right to permit others, including Justice Department officials, to read the documents in Foster's office or even a part of them without a prior review by me.

I believe that each of you—and each of you, like the President, is a major public figure—would want your counsel to respond in the same way to a request by the Justice Department or anyone to examine your confidential documents in your counsel's office. You would not want the door to your counsel's office thrown open to even a first-page examination of your confidential files without a prior review by you or your counsel. You might waive—and I'm sure you would waive—whatever confidences and privileges you had, and you might cooperate—and I'm sure each of you would cooperate fully with investigators, but you and each of you would want your documents in your counsel's office reviewed first before you would let anyone take a look at them. You would want—and I know you would want—any decision to waive confidentiality and privilege respecting your documents to be reached carefully and deliberately. The President of the United States was entitled to at least the same protection, to at least the same right regarding documents in his Deputy Counsel's office after that lawyer, Vince Foster, died in July 1993.

As I said, I did not believe in July 1993 that my acting in accordance with my obligations as a lawyer would undermine the credibility of Federal law enforcement. I still do not believe it after hearing Mr. Heymann's testimony before this Committee.

Mr. Heymann apparently believes that all lawyers, other than Justice Department lawyers, are "players" with a "significant stake in the matter." He believes they cannot—and indeed they must not—be trusted to "act as a referee," his words, when it comes to reviewing and producing documents. That notion is foreign to our system of civil and criminal justice. It is contrary to how our system functions.

All lawyers, whether they are White House lawyers, private lawyers, or Justice Department lawyers, are bound by the same ethical obligations. No one of us stands on a higher pedestal than the other. No one of us is more or less of a player with a stake than the other. No one of us is more or less deserving of trust than the other. In our system of justice, tens of thousands of lawyers each day act as referees under strict ethical rules when it comes to reviewing and producing documents. This is how our system functions. These lawyers are subject, of course, to that ultimate referee, our judges.

Phil Heymann's view that when it comes to the President's documents, the public will only trust and accept the word of a Justice Department lawyer and not a White House counsel or a private lawyer is not only disappointing, it is destructive, for it feeds the very cynicism, it creates the very distrust that he claims to be com-

bating. I've known Phil Heymann a long time. Phil is a good and decent and honest person. Here, in my judgment, he just happens to be profoundly wrong. And so, as I will describe later, while I sought to accommodate the legitimate needs of law enforcement, I fulfilled my professional obligations, and, as you will hear, I was also concerned, as Mr. Heymann appears to be, about appearances.

Before I turn to specific events regarding the handling of documents following Mr. Foster's death, I want to tell you about certain things that did not happen. I did not, nor to my knowledge, did anyone else in the White House destroy, mishandle, or misappropriate any document in Vincent Foster's office.

The documents in Vince Foster's office were preserved. The documents in Vince Foster's office were preserved. Every document sought by law enforcement authorities, some right after Vince's death and others months later when the Whitewater matter erupted in the press, were turned over by the White House and by the President. It has been suggested over and over again that the reason I transferred personal files to the First Family after Vince's death was because I or others had some deep concern with the Whitewater matter. This is false.

The Whitewater matter, which subsequently became the focus of so much attention, was not on our minds or even in our consciousness in July 1993. Whitewater had absolutely nothing to do with how documents were handled in the White House following Vince Foster's death, and yet it is that matter, Whitewater, that has resulted in these hearings. I will return to this later.

Let me now describe in some detail those fateful days in July 1993.

Tuesday, July 20.

I was at a Washington restaurant on the evening of July 20, 1993 with my wife and friends. That was the day that the President announced the appointment of Louis Freeh as the new Director of the FBI.

It was also the day that Judge Ruth Bader Ginsburg began her successful Senate confirmation hearings for the Supreme Court. Vince and I had been involved with both those appointments. We were very proud of them. So I was in a happy frame of mind that evening when the White House called me at the restaurant. When I was told that Vince had committed suicide, I was stunned and deeply depressed. I immediately went to the White House, where I saw the President and a number of White House officials. As you have heard, we were all understandably sick with grief.

The President left with Mack McLarty, the Chief of Staff, to comfort the Foster family. Because I was concerned that my staff not learn of Vince's death through media reports, I went to my office to phone them. As I walked to my office, it occurred to me that perhaps Vince left a note telling us why he had taken his life. I decided to go to his office, which was next to mine, to see if there was a suicide note.

When I reached the White House Counsel's suite at around 10:45 p.m., I found the door open. Patsy Thomasson and Maggie Williams, two White House staff members, were in Vince's office. Maggie was sitting on Vince's sofa crying. Patsy, who was sitting

behind Vince's desk, said they had just arrived. Patsy told me she was looking for a suicide note. Patsy and I checked the surfaces in Vince's office. We opened a drawer or two looking for a note.

No one—no one looked through Vince's files. Patsy did not examine any individual file. She did not rummage through or examine any individual file, nor did I. We did not find a note. We spoke about Vince and what a tragedy this was. Each of us, all of us were quite emotional that night. The three of us then left the office. Nothing was removed by any of us. We were there no more than 10 minutes. It has been suggested that our brief look—our brief human look, understandable look for a note that night of July 20 was some secret, mysterious act to be hidden from others.

The fact is that the next morning on July 21 I told law enforcement officials that Patsy, Maggie, and I were in Vince Foster's office the night before. I told him that Patsy and I briefly looked for a suicide note and found nothing. After leaving Vince's office on July 20, I remained in the Counsel's suite. I went next door to my own office. I made the phone calls, very difficult phone calls, to my staff to tell them of Vince's death. I was there for about an hour. When I left my office that night, I believe I locked the door of the suite, as was my habit when I was the last one leaving.

Wednesday, July 21.

July 21 was a difficult and busy day. Many members of the White House staff visited the Counsel's Office to express their sympathies, to talk about Vince. There was much for me to do that day. When I arrived at the White House that morning, my staff was in shock. All were grieving. I learned that one of my secretaries had gone into Vince's office that morning to straighten it up. That secretary, who was distraught, felt Vince's office should look nice when people came to see it. I asked her not to go back into the office. Vince's office itself did not have a lock on the door, but the Counsel's suite did.

Initially I did not think about securing the office in any special manner. It was not a crime scene. Vince did not die there. One does not typically seal the workplace of a person who commits suicide. No one the night before suggested to me that Vince's office should be sealed, but on the morning of July 21, after talking about the issue with two of my staff members, we called the Secret Service. We asked to have an agent stand outside of and control access to Vince's office. The Secret Service promptly complied with that request. That evening, a lock was installed on the office door.

That morning of July 21, I also attended a meeting in the White House with the Park Police. They told us about the discovery of Vince Foster's body and the scene of his death. They said they believed that Vince had committed suicide. The President came to the Counsel's suite on July 21. He came to console the people who worked there.

While the President was with us, I briefly entered Vince's office. I removed and showed to the President an early 1950's photograph of Ms. Mary's kindergarten class in Hope, Arkansas. That photograph, which Vince cherished, showed a 5-year-old Vince Foster and a 5-year-old Bill Clinton. Nothing else was removed from Vince's office that day. Later that afternoon, the President, Mack

McLarty and I addressed the entire White House staff to try to comfort them. It was not easy.

Mid-day, members of the Park Police contacted me. They asked me to review the contents of Mr. Foster's office to see if there was a suicide note, an extortion note, or some other similar document. They also asked to interview me and members of my staff.

I thought there might be multiple requests for information, so I called Mr. Heymann, Philip Heymann, the Deputy Attorney General, and asked if the Justice Department would agree to coordinate the investigations of Foster's death. He said the Department would do so. In the late afternoon, I met with representatives of the Park Police, the Department of Justice, and others. We agreed that interviews of my staff members, many of whom were still shaken, would be held the next morning. We also agreed after some discussion that a search of Vince's office would take place the next day to search more thoroughly for a suicide note or similar such document. I will return shortly to this meeting with the Justice Department on July 21.

Thursday, July 22.

The next day, on July 22, the Park Police interviews of staff members took place as scheduled. The search of Vince's office began in the early afternoon. How the search of Vince Foster's office was conducted: Prior to the search of Mr. Foster's office, I gave a good deal of thought about how it should be done. Vince's office was the office of a senior executive branch lawyer. It contained numerous confidential and privileged files. It had extremely sensitive documents, such as briefing books on Supreme Court nominees and sensitive reports, background reports on other high Administration officials. I believed there also might be national security information in the office.

As a lawyer and as a former Justice Department prosecutor, I was an Assistant U.S. Attorney in the 1960's under Robert Kennedy, the Attorney General, and Bob Morgenthau, the U.S. Attorney. As a Federal former prosecutor myself, I understood and respected the desire of law enforcement officials to examine the office promptly. I understood their need to see if there was a suicide note or some other such document that might help explain Vince Foster's death.

It is important to understand what we were being asked to do on July 22, to understand what the search was for and what it was not for. The search was for a suicide note, an extortion note or some similar document which reflected depression or acute mental anguish. That is the request law enforcement officials made of me. They did not ask to read every piece of paper in Foster's office, every official White House record there, every personal file there to see if there was any indication of concern about any matter Vince had been working on.

I was not faced with a request for some general excursion through documents to determine Vince's state of mind about matters he was working on. But even as to the limited request made of me on July 22, it was my duty as a lawyer and as White House Counsel to protect client confidences, including highly-sensitive Government documents in that office. It was my duty to preserve

the ability of the White House to assert executive, attorney-client, and work product privileges and to be concerned about institutional precedent.

This was a duty that I could not ignore. This was my professional obligation under the code of professional responsibility and the model rules of professional conduct, which, in one form or another, govern the conduct of all lawyers and protect the confidences and secrets of all clients. Before deciding on how to balance the competing interests I was facing, I spoke with other attorneys in the White House on the morning of July 22. I talked to a number of people about this issue as to how to search for a suicide note should be conducted.

But I did not speak to the President or the First Lady about this matter, nor did Susan Thomases or anyone else convey a message to me from either of them. Susan Thomases did not discuss the First Lady's views with me, but I should say I assume from the outset of this tragedy that the First Lady, who's a very good lawyer, like every other good lawyer in or out of the White House, would believe that permitting unfettered access to a lawyer's office is not proper. That was my assumption. It was not the result of any conversation with her.

I was urged by one senior White House official, Jack Quinn, who you've seen, the Vice President's Chief of Staff who is an able and experienced Washington lawyer, not to permit law enforcement agents to enter Vince Foster's office at all. Jack was not concerned about particular documents or files. We never had a discussion about any sensitive matter. Jack was concerned and properly concerned about setting an unfortunate precedent for the future and the institutional need of the White House to preserve confidentiality, concerns I shared.

Jack suggested that I should inventory the office and create a log of privileged documents. I also talked to Bill Burton, who's an able Arkansas and Texas lawyer, he was Mack McLarty's principal assistant. Burton leaned in the same direction as Quinn.

However, if I had agreed with their otherwise sensible and conservative counsel, it would have meant that law enforcement agents could not have entered Vincent Foster's office for many, many days. It would have taken a long time to do an inventory and a log of privileged documents. Such a delay, I knew, would have greatly displeased law enforcement agents. It would have angered and it would have frustrated them. I believed it was not fair to those officials to keep them out when all they were asking was to conduct a prompt search for a suicide note.

I also did not think it politically wise to keep them out. Barring the door to Vince's office did not make sense to me from a public perception point of view. You see, I was concerned about appearances. If I had not been concerned, I would have followed the advice of my fellow attorneys and denied everyone access to Vince's office. That is the way we likely would have acted in private practice with respect to a search of a lawyer's office. But I understood well that we were representing a public figure, the President of the United States.

I decided I was not going to keep law enforcement officials out of Vince's office. I chose a middle ground. I chose a procedure that

balanced and accommodated the interest of confidentiality and law enforcement interest. I chose a procedure that provided the agents with immediate access to Vince's office avoiding, I hope, by doing so, unnecessary conflict with the agents and unfortunate appearances.

This is the procedure I followed. This is what we did on July 22. I entered Mr. Foster's office together with the law enforcement officials. No one sat in a hallway. The agents were with me at all times during the search in Vince's office. As the agents watched, I personally pulled out each of the files in that office. I briefly reviewed the files. As I was doing so, I gave the agents a general description of the documents, and I checked to see if there was a suicide note or an extortion note or other similar document in those files, which is what this search, after all, was all about. But the agents did not sit as cigar store dummies as I conducted the search.

I also accepted requests from the agents to read for themselves any document I was describing. As I went through the files in Vince Foster's office, the agents did respond. They did ask to see and read certain documents. I set those documents aside. Subsequently, after we reviewed them, every document the agents asked for was, within a matter of days, given to the law enforcement officials. The procedure I used provided law enforcement officials with prompt access to Vince's office. At the same time, it protected confidentiality and preserved the right to claim privilege. But we never claimed privilege. I repeat, we never claimed privilege. Every document the investigative authorities asked for was given to them.

Now, let me turn back to my meeting with Justice Department officials on July 21. I am aware that some of those officials have said that on July 21 we reached an agreement, that we agreed that they would be able to read at least a portion of each document in Vince's office to determine what was privileged and relevant. Phil Heymann also believes I owed him a call back on July 22 to discuss the position I was taking. I had, and as I said earlier, and continue to have a high regard for the Justice Department officials involved in this matter, Phil Heymann, David Margolis, and Roger Adams. They are good people. We were all trying in good faith to accommodate our respective institutional interests.

We had legitimate differences of opinion, differences that clearly remain to this day, and difficult judgment calls to make. We discussed various options. I never tried to cut off discussion, nor did I consciously duck Phil's desire to talk further to me. One option we discussed on July 21 was the possibility of allowing Justice Department lawyers to look at a portion of each document to see if it was privileged. I did say I would consider that option. I did not say I would agree to it. I did consider it very carefully.

By the next day, I had determined that this would create an unacceptable risk of disclosure of confidences and an equal unacceptable risk of waiver of the privileges I was obligated to protect. As for privileged matters, the law regarding waiver is both strict and uncertain. A party cannot selectively disclose portions of attorney-client privileged documents without running a serious risk of forfeiting the right to keep other documents and communications on

that subject matter privileged. I could not take such a risk of waiver consistent with my obligations to preserve the right to assert privilege.

If the Justice Department officials believe that we reached an agreement after our July 21 meeting, then a misunderstanding and a miscommunication occurred, and I may be responsible for that. But I do not believe, nor, as you have heard, do my colleagues in the White House Counsel's Office believe, who were also present at those meetings, that we reached any agreement on July 21 or that we in any way misused the Department of Justice.

If anyone at the Justice Department felt at the end of the day on July 21 that there was an inadequate review of the documents in Mr. Foster's office or that agreements were broken or that more should have been done, they could have at any time after July 22, asked for a further review. They could have asked for specific files or all the files, and we would have responded as we thought appropriate, but no one ever did so. To me at least, that inaction then, lack of action then speaks louder than words now.

Let me now turn to the search—return to the search on July 22. During the search, I came across a substantial number of Mr. Foster's own personal files. They were placed in a separate pile on Mr. Foster's desk. I believed Vince's personal files no longer belonged in the White House Counsel's Office. They were not Government records. They were his personal records. If there were to be any requests to examine those documents, they should be directed to the family's personal lawyers. I said that. I said that in so many words to the law enforcement officials. I said if you want to look at Foster's files, personal files, talk to his personal lawyers.

They agreed to my transfer of the personal files to the Foster family lawyer, who, as you all know, was there during the search. I made the transfer right on the spot, right in front of the law enforcement agents. Later, those officials contacted the Foster family lawyer. They asked to see and read all the Foster personal documents. As you have heard at this hearing, after the documents were first reviewed by the Foster family lawyer consistent with his professional obligations, his ethical obligations, the officials, the law enforcement officials were shown every one of the Foster personal documents.

The vast majority of the files I reviewed during the office search on July 22 were Mr. Foster's working files, matters that he was working on in his role as Deputy White House Counsel. When the agents left, the search was over. I wanted to get on with the work of the office, to reassign Foster's matters to other attorneys. As this Committee has heard, the Justice Department attorneys were aware that Foster's working files would be immediately distributed to other attorneys in the office. I began this process immediately.

Now, let me turn to the Clinton personal files. During the office search on July 22, I saw a number of files that concerned personal matters of the Clintons. I identified them to the agents present. I said these were Clinton personal files. I said these involve investments, taxes, other financial matters and the like. Included was a file on the Clintons' Whitewater real estate investment. I knew that Vince had been assisting the First Family in completing financial disclosure statements, filing tax returns, and creating a blind

trust. A President and his family are officially required to perform such acts.

As such, it is proper and indeed traditional for the White House Counsel's Office to assist in that official function. Mr. Foster needed access to the Clinton personal files for these official purposes. They were, therefore, properly in the White House Counsel's Office. But that did not make them any less personal files.

Even though the First Family has to file financial disclosure forms and other similar documents, blind trust and the like, and even though it must use its personal financial files as the basis for that disclosure, it does not follow that every such file becomes a Presidential record. That would be a ludicrous result. Those files had nothing to do with the transaction of Government business, although they were needed to file official forms. They remained personal files. They remained the Clintons' personal files. I knew that the work on the projects for which the personal files were needed had recently been completed.

With Vince's death and the work done, the reason for our office possessing these personal files was at an end. Just as I believed the Foster personal files should go to the Foster family lawyers, I believed the Clinton personal files belonged in the hands of the First Family or their personal lawyers. Shortly after the search of Vince's office was completed, I asked Maggie Williams the First Lady's Chief of Staff, to help me transfer these files to the Clintons and to their personal lawyers.

I told Maggie that I thought the Clintons would probably want to send the files to Williams & Connolly, a Washington law firm that had been working with Vince and was representing them personally. I said she should confirm that with the First Family. The Clinton personal files were sent to the White House residence on the evening of July 22. They were sent to the residence because it was late in the day and we were leaving for the funeral in Arkansas early the next morning.

While it would have been perfectly proper for them to do so, if they so desired, it was my understanding that neither the President nor the First Lady examined those files while they were in the residence. On Thursday, July 27 after we returned from the Foster funeral, the personal files, the Clinton personal files were delivered to Williams & Connolly.

As this Committee has heard, the Justice Department attorneys understood that these Clinton personal files would be going to the President's outside attorneys. It has been suggested that I transferred the Clinton personal files because of some deep concern that I or others had with Whitewater. As I said earlier, that is false. My decision to transfer the Clinton personal files, including the Whitewater file, had absolutely nothing to do with what has come to be called the Whitewater matter.

If you had asked me on July 22, 1993, the day I transferred that file among others, what Whitewater was, I do not believe I could have told you. Questions about the Whitewater real estate investment had surfaced briefly in March 1992 during the Presidential campaign. But in July 1993, Whitewater was not on my screen, nor, as far as I know, was it the subject of discussion in the White House. And if it was, it was something I would have known.

It was not until months later that I learned there was an investigation involving the Whitewater matter. Whitewater was also not mentioned in Vince's now-famous torn-up writing found in the bottom of his briefcase. Vince did in that writing list a number of things that were bothering him. Whitewater was not one of them. On Friday, July 23, we flew to Arkansas with the President to attend Vince's funeral. I returned to the White House on July 26. During that period of time, Mr. Foster's office was locked.

Before we left for the funeral, I had asked Steve Neuwirth to pack up the remaining personal items in Vince's office such as photographs and wall hangings and send them to the Foster family. On Monday, July 26, Steve turned to his task. He started to fill a box with Foster personal items. He picked up Vince's briefcase and turned it over to place it in the box. Yellow scraps of paper fell out of the briefcase.

As Steve collected the scraps, he noticed there was handwriting on them. During the July 22 search, I had removed files from this briefcase. I had not noticed scraps at the bottom of the case, nor do I recall any conversation on that date referring to scraps in the bottom of the case with Cliff Sloan or anyone else. On July 26, as soon as the scraps were found, they were pieced together by Steve in my office with my help. We discovered a list in Vince's handwriting. It reflected issues that had been troubling Vince. As I said, Whitewater was not one of them.

This list was given to the Park Police the next day, on July 27, after Mrs. Foster and the President were given a chance to review it. I waited a day to turn the list over because I believed then and I believe now that it was common decency to allow Lisa Foster to see the writing before it was turned over, to see it before it could be leaked or before it could be on national TV in some fashion. Lisa saw it on the afternoon of July 27.

I thought it also appropriate that the President, who was out of town that day, have a chance to see it, if he wished, before it was turned over. This 1-day delay had no impact whatsoever on any investigation. In essence, this is how the documents in Vince Foster's office were handled after his death. Nothing was destroyed. Everything was preserved. Everything that law enforcement officials asked for was turned over to them.

Whitewater was not on my mind at the time of that death, nor I believe on anyone else's. And in attempting to accommodate my professional obligation to preserve a client's confidences, to accommodate my professional obligation with legitimate law enforcement needs, I was asking as a lawyer must act. I was acting as a lawyer should act. I was acting as a lawyer is obligated to act.

Looking back, therefore, despite hue and cry, despite the media frenzy, despite this hearing, if I had to do it all over again, facing the same circumstances, I would do it essentially the same way. Does this mean I would repeat every single step? Does this mean I would do everything exactly the same as I did it then? Does this mean that I acted perfectly in every respect? Of course not.

Certainly on July 22 I wish I had looked more carefully into the bottom of the briefcase. I wish I had found the scraps of paper on that day, but that omission resulted in no harm. The note in the briefcase, fortunately, was discovered 4 days later, gave us a clue

to what was bothering our friend Vince and turned over to law enforcement authorities—excuse me, and turned over to law enforcement authorities.

I believe the fundamental decisions I made were correct, how to conduct a prompt search for a suicide note in a lawyer's office, how to handle files in that office. I was required to make difficult judgments in a unique situation. I was required to balance differing interests in a sensible manner. I believe I did so. I do look back on those days in July 1993 with a profound sense of sadness and regret. That is because we lost Vince Foster. But I do not look back with regret at the way we in the White House Counsel's Office conducted ourselves in those tragic days following his death and the way we handled the documents in Vince's office.

Let me now say that in my view, the reason we are having this hearing on the handling of documents has really little to do with how we handled the documents in July 1993. I believe, with all due respect to the distinguished Senators on this Committee, that it would have made no difference if during the search on July 22 I had shown the Justice Department attorneys a portion of each document. It would have made no difference if we had even found a note on July 22 instead of July 26. It would have made no difference if I had served law enforcement officials 30 cups of coffee and spoke gently to them in other than a New York accent, which, unfortunately, is the only accent I have. We would still be having these hearings. We would still be sitting here today.

What prompted these hearings is something different. It is the linkage—the unfair linkage of two separate, disparate events. The first event involved my transfer in July 1993 of personal files, including a Whitewater file to the Clintons' personal attorneys following Vince's death, a transfer which was totally proper and indeed known to Justice Department officials.

The second separate, disparate event involves the emergence in the fall of 1993 of Whitewater investigations and the resulting media frenzy. Linking these two events is illogical, unwarranted and unfair. They are totally unrelated. What we did—what I did in July 1993, particularly the transferring of personal files, had absolutely nothing to do with what has become the now-famous Whitewater matter. Yet our actions in that earlier period, in July 1993, are being judged on the basis of that later event.

This linkage creates for some a so-called appearance of improper conduct, but unless in July 1993 you could see into the future, unless you could foresee the unforeseeable, there was absolutely no way to avoid that appearance. I have many talents. One of them is not seeing the future. In any event, it is this false linkage which has resulted in these hearings—it is this false linkage that has resulted in these hearings, not the way we handled the documents in July 1993.

This exercise in political hindsight and chronological inaccuracy is unfair, but the fact that life may turn out to be unfair does not justify shrinking from your responsibilities, either in July 1993 or today. You know from the last time I appeared before this Committee that I strongly believe public officials do not have the option of avoiding their responsibilities because they are difficult or inconvenient or may result in criticism. I have learned—believe me, I

have learned this is a controversial notion. I have learned that for many, the concern is not so much for duty or propriety, but for how things appear, or, perhaps more accurately, how they can be made to appear.

This appearance of impropriety standard, which is so much in vogue, today places the ultimate emphasis on how things look, or again more precisely, how they can be made to look, not whether they are right or wrong. Fear of appearing to do wrong prevents too many, in my view, from doing what is right. That is a prescription for weakness and paralysis. That is not the way I choose to live.

I believe that no lawyer, no counsel, let alone a Counsel to the President, should shrink from his duty, from his professional obligations in order to protect his own image or standing. A lawyer should not—indeed ethically he cannot turn his back on his client because the political or media heat will be turned up because someone with an axe to grind or newspapers to sell may attempt to make totally proper conduct appear improper.

But what about political judgment? Isn't the President a political figure? Shouldn't the President's Counsel be worried about the political impact, the public relations impact, the appearances of his advice and conduct? Of course he must. Of course he must exercise political judgment. Of course he must be concerned about appearances and public perceptions. And, as I said earlier, I too was concerned about appearances in July of 1993 when I disagreed with some of my senior fellow White House aides.

But let me say something more fundamental. Let me say what I believed before I went to Washington and what I still believe after leaving Washington: When you are privileged, as I was, to hold high public office, ultimately—for me at least—the best public relations, the best political judgment requires adhering to the following principles. Do the right thing. Do the right thing. Realize that at times, your actions will be misunderstood, that you will be involved in conflict, that you will get bad press, very bad press—acknowledge your mistakes when they occur. Acknowledge your mistakes when they occur. No one is perfect, and mistakes do happen. But if you acted correctly, defend yourself, defend yourself publicly and defend those around you in an open, honest and forthright manner. Be principled, be consistent and strong. Most important, when you get to the White House, as White House Counsel, worry less about tomorrow's headlines and more about the judgment of history.

These tenets, these principles which we in the legal profession whether we're from New York, California or Florida or Washington or Arkansas or Illinois or Maryland or Massachusetts or Connecticut or Alabama or North Carolina or Utah or Alaska or Illinois or Washington—I said Illinois—and California, I said California—

The CHAIRMAN. You didn't miss anybody, Bernie.

Mr. CHERTOFF. You left out New Jersey.

Mr. NUSSBAUM. These principles, which we in the legal profession strive to obtain when we're at our best, are too often missing in public life. They need to be retrieved and revived, and I believe—I fundamentally believe that in the long term, even the intermediate term, maybe not the short term—but even the inter-

mediate term, they not only make for good Government, they make for good politics.

What it comes down to is that the President of the United States, above all, is entitled to have a lawyer in the White House who will be and act unafraid. Such a counsel will serve his client and his country far better than one who is overwhelmed by a concern for appearances or protecting his own image. That is the counsel I tried to be. And that is why I look back without regrets.

Thank you, Mr. Chairman. Thank you, Members of the Committee.

The CHAIRMAN. Thank you, Mr. Nussbaum. We are now going to turn to Senator Hatch.

Senator Hatch.

OPENING COMMENTS OF SENATOR ORRIN G. HATCH

Senator HATCH. Thank you, Mr. Chairman.

Mr. Nussbaum, welcome to the Committee. We're happy you took time to come today.

Mr. NUSSBAUM. Good to see you again, Senator.

Senator HATCH. It's nice to see you. I have to ask some of these questions. Let me go through them as quickly as I can and just establish some of the facts and see where we go from there. Now, as I understand it, Mr. Foster, who was the Deputy White House Counsel, was installed in that position actually before you took over as White House Counsel?

Mr. NUSSBAUM. That's correct.

Senator HATCH. Were you acquainted with Mr. Foster before he became Deputy White House Counsel?

Mr. NUSSBAUM. I met Mr. Foster in Arkansas at the end of 1992, and I became acquainted with him at that time. After the President was elected, while he was President-elect, I went to Arkansas to discuss the position with the President of becoming White House Counsel.

Senator HATCH. So you just knew him slightly?

Mr. NUSSBAUM. That's correct.

Senator HATCH. Let me direct your attention to July 21, 1993. Other Members of the Committee may dwell on July 20 and the events occurring shortly after you learned of Mr. Foster's death, but I would like to focus primarily on events occurring on July 21 and 22, 1993. Now, as White House Counsel, you believed, as I understand it, that you were going to be the principal contact in dealing with the various law enforcement agencies; right? It would be naturally your job?

Mr. NUSSBAUM. Yes.

Senator HATCH. Isn't it true that in your capacity as Counsel to the President, you took it upon yourself to call your old friend Phil Heymann, the Deputy Attorney General and ask whether the Department would coordinate the investigation into Mr. Foster's death?

Mr. NUSSBAUM. Yes, you see, Senator, I realized in the West Wing on July 21 that—after meeting with the Park Police and they asked me to interview members of my staff, look at Foster's office, I realized—the FBI was around. The Secret Service was around. I realized there was a potentiality for numerous investigations, and

I understood that. The Secret Service is concerned with Presidential security. They may want to look into it. The FBI is our premier law enforcement agency——

Senator HATCH. But you called Heymann in this case?

Mr. NUSSBAUM. —they were the one looking—I called Heymann because what I wanted to do is to get one agency to coordinate the investigation, so people could be interviewed once, documents could be reviewed once. It's a normal and natural thing to do and that's why I called Phil Heymann, to ask him to do it.

Senator HATCH. Then it was your idea to have Justice coordinate the investigation?

Mr. NUSSBAUM. That's correct.

Senator HATCH. And you called Heymann. Do you recall the substance of your discussion with Mr. Heymann, other than——

Mr. NUSSBAUM. Phil—there's going to be—he knew about Vince's death. Obviously there will be investigations and there may be a number of investigations, would you consider coordinating these things under the Department of Justice general supervision. But I didn't say to him who should conduct the investigation. I didn't say the FBI should do it or the Secret Service should do it or the Park Police should do it. That was up to law enforcement to decide how to do it. I said I would just like my people and other people interviewed once, hopefully, by one agency rather than different agencies walking in, and I said also that I would like documents to be examined once——

Senator HATCH. So that was basically the substance of your conversation with Mr. Heymann at that time?

Mr. NUSSBAUM. That's correct.

Senator HATCH. You also recall meeting with Justice attorneys David Margolis and Roger Adams after that day?

Mr. NUSSBAUM. Yes.

Senator HATCH. You remember, do you not, that the Park Police officers and FBI agents were also present at that meeting?

Mr. NUSSBAUM. Yes.

Senator HATCH. During that meeting, the Department of Justice attorneys made it clear that they wished to review the documents in Mr. Foster's office that might bear upon his frame of mind before he committed suicide; right?

Mr. NUSSBAUM. No, that's not correct.

Senator HATCH. They did not?

Mr. NUSSBAUM. No, let me tell you what happened, Senator. The Department of Justice attorneys, David Margolis and Roger Adams, as I said on my statement, are good, decent, intelligent people. I expressed to them when we started discussing the possibility of searching Foster's office—I said to them, I have some concerns. This is a lawyer's office. There are issues of confidentiality. There are issues of privilege. There are issues of executive privilege. I said there are sensitive documents, and they, being the kind of people they are, were sensitive to those concerns.

Senator HATCH. I understand, but they were concerned about whether there was a suicide note or an extortion note?

Mr. NUSSBAUM. They were concerned whether there was a suicide note, that's correct. So we had a dialog—good lawyers—at least I hope—they were good lawyers at least—good lawyers were

talking to each other to try to resolve what is a tricky and difficult issue. Good lawyers with sort of different institutional interests and different institutional concerns and that's what was going on, Senator Hatch, in that office. They were trying to see my point of view, and I was trying to see their point of view and in doing so, we were discussing various options.

Senator HATCH. And one of the things that you were discussing concerning some of the documents was that; in Mr. Foster's office, that they might be privileged——

Mr. NUSSBAUM. Yes, that's one——

Senator HATCH. —as you've stated in your statement. Nevertheless, as I understand it, you agreed with the Justice Department attorneys that you would review the documents together; right?

Mr. NUSSBAUM. No. What we did was we talked about the way it should be done. One way we can do this, fellows, is I open the door you walk in and read every document, read anything you want to read. That doesn't make sense, I said to them, and they sort of readily agreed to that. That doesn't make sense. This is a lawyer's office. This is privileged stuff here.

Another option is you go away, I will go in myself, review the files and tell you if there's a suicide note. You just can't walk in. I will do it on my own and tell you if there's a suicide note because it's a sensitive office. That's an option.

Third option is we read—you show us the first page of the file with respect to—so we can make a determination if it's privileged or relevant to our search. That's an option. We discussed that.

And there's a fourth option, which is the option that we used ultimately. We'll go in together. We'll break the seal together.

Senator HATCH. That's what you decided to do?

Mr. NUSSBAUM. That's what I decided to do.

Senator HATCH. Mr. Margolis and Mr. Adams, they stated here that they thought there was an agreement that the Justice lawyers would review at least the title page and the first page of each document and then make a determination with respect to privilege——

Mr. NUSSBAUM. That was one of the options that——

Senator HATCH. —but you say that was never agreed to?

Mr. NUSSBAUM. I said to them I would consider it. It was a serious option. I had to think about it. I said I would consider it and seriously consider it, but I never agreed to it.

Senator HATCH. So there was no agreement as far as you were concerned?

Mr. NUSSBAUM. To the best of my recollection, and I do have a recollection about this, there was no agreement. I think my recollection is supported by Mr. Neuwirth of my office who was there, by Mr. Sloan of my office who was there. I think it may even be supported by Agent Salter of the FBI who was there. On the other hand, I'm not disputing the sincerity of Mr. Adams' testimony or anybody else who testifies that they sincerely believed there was an agreement.

Senator HATCH. Did you take any notes of those conversations at all?

Mr. NUSSBAUM. No, I didn't take any notes, but as the Senator knows, people in good faith can leave a meeting with a misunderstanding or a miscommunication. I didn't think I left it with a mis-

understanding or miscommunication, but perhaps they did. And as I said earlier in my statement, Senator, I may have been responsible for it.

Senator HATCH. I understand. I have to go into this, but——

Mr. NUSSBAUM. I understand you have to go into it. I'm trying to help you.

Senator HATCH. OK. You're doing just fine. I would like to refer you to the typed notes of Mr. Adams, who is a career prosecutor at Justice.

Mr. NUSSBAUM. When were those notes made?

Senator HATCH. Do you have a copy of them? I think we gave you a copy before the hearing. We have them up on the Elmo here. These are the typed notes that were made shortly after the meeting, as I understand it, by Mr. Adams.

Mr. NUSSBAUM. I understand these notes were made the following week after the note was discovered. They were not made shortly after the meeting. They were made after the note was discovered and turned over to law enforcement officials, and there was some concern about how people would look now that the note was discovered 5 days after the search. They were not made after the meeting.

Senator HATCH. Whatever. What the note says starting in the middle—it's highlighted. "At the Wednesday meeting there was agreement that the Justice Department attorneys would look at each document or at least each file to determine if it contained privileged material, in which case it would not be examined by the Park Police or FBI. We would not read the documents or make notes, but merely examine them long enough to determine if they were covered by the attorney-client privilege or possibly executive privilege.

"As an example of the clarity of this agreement, Mr. Neuwirth at one point, apparently trying to summarize it, said that 'Bernie would look at each document and determine privilege. If he determined no privilege, it could be shown to the law enforcement officers.' He was immediately corrected and Mr. Nussbaum agreed that the Justice Department representatives would see the documents to determine privilege." That's what Mr. Adams believed happened according to his notes?

Mr. NUSSBAUM. That's what Mr. Adams, a week later, after the note was discovered and turned over to law enforcement authorities, dictated this memorandum in response to a request from somebody, perhaps Mr. Heymann, that he state what happened the week before. This was not written after the July—right after the July 22 meeting, and it was not written prior to the note being discovered. But that doesn't mean, Senator—I don't want to suggest by that that Mr. Adams does not believe exactly what he put in this memorandum.

Senator HATCH. So what you're saying is that Mr. Adams undoubtedly wrote these down within a week or so afterwards and that he believed these, but you're saying this isn't so, and this is not your recollection?

Mr. NUSSBAUM. I have a different recollection than he does——

Senator HATCH. This did not refresh your recollection?

Mr. NUSSBAUM. —as does Mr. Neuwirth, as does Mr. Sloan as do other people present at that meeting, but that happens all the time, Senator.

Senator HATCH. I understand.

Mr. NUSSBAUM. You know, people go to meetings and walk out of meetings with different recollections. It happens every day.

Senator HATCH. It's been known to occur.

Mr. Nussbaum, Roger Adams' notes of the meeting states you reached an agreement. Mr. Neuwirth objected to the agreement but you overruled him. Now, your testimony here is that he's mistaken, that that just didn't happen?

Mr. NUSSBAUM. He has a different memory than I. I think he's mistaken, yes.

Senator HATCH. Let me turn now to Mr. Heymann's notes. If you look at Mr. Heymann's notes, if we can put that up there for you.

Mr. NUSSBAUM. These notes were done in February 1994; is that correct, Senator, 9 months later?

Senator HATCH. If you look at his notes, you will see at the bottom that they read this: "5:00, agents, Park Police, DM," I assume that means David Margolis, "RA," Roger Adams, "Steve Neuwirth all in Bernie's office," I assume that's a reference to you, Mr. Nussbaum?

Mr. NUSSBAUM. It is Senator.

Senator HATCH. "Agree to come back the next morning. We'll use the system agreed on. BN," again, I assume that's you, "agrees. SN," Steve Neuwirth, in other words says no. "DM says it's a done deal and BN agrees." Again, that word "agree" pops up and you're still certain there was no formal agreement or no real meeting of the minds or agreement in that sense; right?

Mr. NUSSBAUM. Right, Senator. Senator, you do know, as I said, that these notes were written 9 months later. These notes were written by Mr. Heymann, who was not present at the meetings. Obviously he's reflecting things people told him. These are not contemporaneous notes either. These are notes by a person who was not at the meeting, made nine months after the meetings.

I'm not saying, again, that Mr. Heymann disbelieves what he's saying here or Mr. Adams disbelieves what he's saying. But the fact is, Senator, because somebody writes down notes with respect to this thing doesn't make it so.

Senator HATCH. I would also note that Mr. Heymann's special assistant, Cynthia Monaco, recorded that you and Mr. Heymann had agreed upon a search protocol. Let me read from her notes if we can put it up there. "Phil was on the phone with Bernie Nussbaum and he said you're messing this up very badly, I think you are making a terrible mistake. What I took it to mean in the context of the general conversation was that Bernie had refused to let David and Roger take a look at the documents. I later heard from David that, in fact, what had happened was that Bernie looked at the documents and told him that a privilege was asserted or was not asserted. This was in contrast to what Phil and Bernie had decided the day before."

Once again, confirmation and agreement as to the search protocol existed, but this also is inconsistent with your recollection?

Mr. NUSSBAUM. It is, Senator. Nor do I believe it's confirmation of an agreement. It's written by somebody who wasn't there and wasn't present in any conversation, but I do disagree with it.

Senator HATCH. I understand. I need to go over these. Mr. Nussbaum, even the FBI agents clearly understood that an agreement had been reached as to the search protocol. Let me just call your attention to this FBI teletype. The teletype states, "An initial meeting was held with White House Counsel Bernard Nussbaum at which time it was agreed that the victim's office, which is located adjacent to Mr. Nussbaum's, would continue to be sealed by the U.S. Secret Service until 10:00 a.m. on 7/22/93, at which time Margolis and Adams would conduct a preliminary examination of documents located within the office."

Now, it seems pretty clear that an agreement existed at least as to the manner in which the review of documents would take place and let me just get this straight, and I think it is important. Mr. Margolis, a career prosecutor, believed that the agreement existed. Mr. Adams, who had even served a detail in the White House, believed that an agreement had existed. Mr. Heymann, the Deputy Attorney General believed an agreement had existed, Mr. Heymann's assistant, Ms. Monaco, believed an agreement existed and, finally, the FBI agents understood that an agreement existed as to the search protocol.

Mr. NUSSBAUM. Can I respond, Senator?

Senator HATCH. Sure.

Mr. NUSSBAUM. At this hearing, you've had 4 or 5 people who were present at that meeting testify. You have me now. You had Steve Neuwirth. You had Cliff Sloan. You had Roger Adams. You have Agent Salter—5 people who were present at that meeting. Mrs. Monaco wasn't present and Mr. Heymann wasn't present. Out of those 5 people, Senator, I testified that I don't believe there was an agreement. Mr. Neuwirth has testified he doesn't believe there was an agreement. Mr. Sloan has testified he doesn't believe there was an agreement.

Senator HATCH. He pretty much said he didn't know.

Mr. NUSSBAUM. I believe Agent Salter testified that he doesn't recall an agreement. Mr. Adams has testified that he does believe there was an agreement. I think each of those people was testifying honestly.

Senator HATCH. All right. So basically the three at the White House who served the President did not believe there was an agreement. These others believe there was?

Mr. NUSSBAUM. Agent Salter—we all serve the President. Agent Salter serves the President. Roger Adams serves the President and the three of us——

Senator HATCH. I'm talking about as Counsel to the President, to use your terms. Let me move on. Susan Thomases, a New York attorney, testified before the Committee yesterday. You've told this Committee that you're familiar with her and her role as a close friend and outside advisor to the Clintons; right?

Mr. NUSSBAUM. Yes.

Senator HATCH. Did you talk to Ms. Thomases on July 22?

Mr. NUSSBAUM. Yes.

Senator HATCH. Do you remember how many times and——

Mr. NUSSBAUM. I only remember——

Senator HATCH. —what times you did talk to her?

Mr. NUSSBAUM. I only remember one conversation.

Senator HATCH. Would it surprise you to know that you were paged by Ms. Thomases at 8:00 a.m. that morning? And if you remember that, did you return her call right away?

Mr. NUSSBAUM. Nothing surprises me anymore, Senator, but I don't remember that.

Senator HATCH. When you spoke with her that day, that one time that you do recall, you told this Committee that she said that she had "heard" that there were "discussions" and "disagreements" concerning law enforcement's search of the Foster office. She said that she was concerned that "law enforcement people" would have "unfettered access to the documents" in Foster's office. Is that correct?

Mr. NUSSBAUM. Can you repeat that, Senator?

Senator HATCH. Sure.

The CHAIRMAN. I think, Senator, you might want to refer Mr. Nussbaum to his testimony. I think you have a copy there.

Senator HATCH. Yes, I do.

The CHAIRMAN. What page is that?

Senator HATCH. Let's go to that page.

The CHAIRMAN. Is that starting on page——

Senator HATCH. Page 54—154, I'm sorry. Page 154.

Basically what you had said was that she had heard there were discussions and agreements. She was concerned that law enforcement people would have unfettered access to the documents and I think that's consistent with your testimony; right?

Mr. NUSSBAUM. You're going a little too fast for me, Senator.

The CHAIRMAN. Why don't we read it?

Mr. NUSSBAUM. I am just trying to figure out the portion of my testimony here in my deposition testimony you're focusing on.

Senator SARBANES. Would the Senator tell us what page you are on?

The CHAIRMAN. That's what I'm attempting to ascertain.

Senator HATCH. I think it's on page 154—140. I'm sorry.

Senator KERRY. Pages 139 to 142.

The CHAIRMAN. Of the deposition given by Mr. Nussbaum to the Committee?

Senator KERRY. Correct.

The CHAIRMAN. Let's see if we can't all get on the same page and give Mr. Nussbaum the opportunity to get there, too.

Mr. NUSSBAUM. Page 140?

The CHAIRMAN. Pages 139 to 142, I believe it is.

Senator KERRY. Page 139 it starts.

Mr. NUSSBAUM. I have it.

Senator HATCH. You have it? I think it says,

Question: What was the conversation on the 22nd with Susan Thomases?

Answer: The conversation on the 22nd is she asked me what was going on with respect to—what was going on with respect to the investigation or the examination—the examination of Mr. Foster's office. She had heard there were discussions in the White House with respect to this issue, which there were on the 22nd—which you'll get to, I presume—was everything OK and what was going on, and I said I am having discussions with people. See, I remember this conversation before the search, but it could have been after the search.

That's one of my problems. But I remember saying, Susan, I've been talking to people in the White House, how the search would be conducted. I will determine what the right procedure is or I've determined what the right procedure is and I followed it, depending on if that conversations took place before or after the search. We're going to follow the procedure that I think is right, and that's the way—that's what I'm going to do and that's the kind, I think, that I'm determining is a proper way to act with respect to this matter.

You were asked,

Question: How long was the conversation?

Answer: A few minutes. Not very long.

Question: Did she tell you how she had heard there were discussions concerning the manner in which the review would occur?

Answer: The search would occur.

Question: The search would occur?

Answer: No, she didn't say how. She just said she had heard.

Question: What else did she say in the conversation?

Answer: That's all I remember, that she heard there were discussions or that there were—she might have even said disagreements, that she had heard that and what was going on.

Question: Did you ask her where she heard that?

Answer: No, I didn't ask her where she heard that.

Question: Did you feel uncomfortable talking about this issue with her?

Mr. NUSSBAUM. "Did you feel comfortable?"

Senator HATCH. I'm sorry.

Question: Did you feel comfortable talking about this issue with her?

Answer: Yes.

Question: Did you feel it was her business?

And you said "yes." But basically, she had said that she had heard that there were discussions and disagreements and, as I understand it, also, the deposition said that she was concerned about "unfettered access" to the documents. Do you remember that?

Mr. NUSSBAUM. No, I don't. What you've read does accurately—what you've read, not what you just said, but what you've read does accurately reflect my recollection of that conversation with Susan Thomases.

Senator HATCH. Well, on page 142—let me see if I've got this right—I guess that was a question. On page 142:

Question: Did she say that the First Lady was concerned about giving the law enforcement people unfettered access to the documents?

Answer: No.

Question: Did she say that anybody was concerned about giving law enforcement people unfettered access to the documents?

Answer: She said people are concerned about whether I was using the correct procedure or whether the procedure was—people were concerned or disagreeing, something like, that whether a correct procedure was being followed, whether I was using the correct procedure, whether it was proper to give people access to the office at all, something like that."

And you went on:

But I said, Susan, she wasn't in the White House, at least I didn't know she was in the White House. I said I'm having discussions with various people. As far as the White House is concerned, I will make a decision as to how this is going to be conducted. It's going to be done the right way. It will balance out the various interests. It's going to be done the way I think it should be done.

That's a fair——

Mr. NUSSBAUM. That's correct, Senator. I agree with the testimony you just read.

Senator HATCH. Are you aware of the fact, Mr. Nussbaum, that Ms. Thomases denies telling you that she was concerned about law enforcement having access to Mr. Foster's office?

Mr. NUSSBAUM. I am aware that she has a—what I considered a slightly different recollection of the conversation, that she believes that I brought up the subject, rather than she bringing up the subject and there is a difference in our recollection.

Senator HATCH. When asked if she expressed any view to you on the phone—actually, in fact, she testified you brought it up to her—you brought it up—that she did not?

Mr. NUSSBAUM. That's correct.

Senator HATCH. When asked if she expressed any view on you on the phone on the 22nd in regards to the contents of Mr. Foster's office, Ms. Thomases said:

Answer: I think that I—my recollection is that I just said that it sounded like he had thought it through pretty carefully, and I wished him good luck.

Mr. NUSSBAUM. I agree with that portion of the testimony.

Senator HATCH. I think you have to admit that Ms. Thomases' recollection of the phone call is different from yours.

Mr. NUSSBAUM. It is somewhat different from mine, yes, sir.

Senator HATCH. Here we have two tough, experienced New York lawyers who have different viewpoints on what the critical conversation was. You say that Ms. Thomases called you and said that she had heard about the discussions with Justice. She said that you brought it up and that she did not really have an opinion about the search arrangements.

Mr. NUSSBAUM. Senator, you're right. There is a difference in recollection, and you I have had a number of conversations in the past involving the White House, I think sometimes we might have had a difference in recollection—

Senator HATCH. That's probably true.

Mr. NUSSBAUM. —about our conversations.

Senator HATCH. That's possible.

Mr. NUSSBAUM. But I always enjoy talking to you, Senator.

[Laughter.]

Senator HATCH. I always enjoy talking to you. But one of the things that is bothering a lot of us is how in the world did Ms. Thomases, who was not a Government official and who did not have a security clearance, find out about the discussions you had with the Justice Department within the course of just a few hours? How did she call up and know more about the whole problem than people in the press, the Park Police and, frankly, most White House staffers?

Mr. NUSSBAUM. I don't agree with a lot of what's suggested in your question, but I think it's a fair question, Senator.

Senator HATCH. It is a fair question.

Mr. NUSSBAUM. Susan Thomases was a friend and advisor to the President and the First Lady and to other people in the White House. She was consulted on many issues, policy issues by them and by others. She's a very able, intelligent, and good, good person and an old friend of mine, but really, what she is is what people are in every Administration, what Ronald Reagan had, what George Bush had, and what Bill Clinton now has. She's part of the so-called kitchen cabinet.

Senator HATCH. Sure.

Mr. NUSSBAUM. And with Presidents, it's good. It's desirable they have outside advisors, that they can look to people on the outside, not just the people in the White House. Susan was one of those people. I wasn't disclosing to her confident—Senator, could I just finish, please, Senator.

Senator HATCH. Yes, go ahead.

Mr. NUSSBAUM. I wasn't disclosing to her national security information or confidential information or privileged information. I was just telling her that a discussion had arisen in the White House as to a process, as to how something should be done. I didn't even discuss with her, I don't believe, exactly how it should be done. I just said to her——

The CHAIRMAN. Mr. Nussbaum.

Mr. NUSSBAUM. Senator, please——

The CHAIRMAN. If I might, I think one of the keys is did she initiate the conversation as it related to the methodology that was being considered for the search to be undertaken? That's what the Senator is getting at.

Mr. NUSSBAUM. No, the Senator was talking about the conversation——

The CHAIRMAN. I'm interested in that and I think——

Senator HATCH. The point is did you tell her or did she tell you about these concerns? You say that she told you. That's all I want to establish.

Mr. NUSSBAUM. Senator D'Amato, I'll answer your question and Senator Hatch's question. My memory is that she initiated the concern—she initiated discussion about whether or not there was a concern about a procedure. But to answer the Senator's question, I didn't think it was improper to talk to her about this because she was an outside advisor and I wasn't disclosing any confidential or national security information.

Senator HATCH. That is not my point. I'm not criticizing you——

Mr. NUSSBAUM. I'll try not to be so combative, Senator.

Senator HATCH. You're doing fine. When Ms. Thomases told you that people were concerned about the search of Mr. Foster's office, did Ms. Thomases indicate which "people" were concerned?

Mr. NUSSBAUM. No.

Senator HATCH. Did she mention the President or the First Lady, for instance?

Mr. NUSSBAUM. No, she did not.

Senator HATCH. Could Ms. Thomases have been in communication with the President or the First Lady?

Mr. NUSSBAUM. Could she have? Absolutely she could have.

Senator HATCH. It would not have surprised you if she had been?

Mr. NUSSBAUM. It would not have surprised me if she had been.

Senator HATCH. Did the President call you about the document review at any time?

Mr. NUSSBAUM. He did not, Senator.

Senator HATCH. Well, wouldn't it be odd for them to call Ms. Thomases, if they did, and not call you, if that happened?

Mr. NUSSBAUM. I don't know if it happened.

Senator HATCH. You don't know whether or not either of them called her?

Mr. NUSSBAUM. No, I do not, Senator.

Senator HATCH. Did you tell anybody about your contact with Ms. Thomases at all, in the White House or otherwise?

Mr. NUSSBAUM. I may have. I just don't recall at this point.

Senator HATCH. Did you tell Steve Neuwirth, for instance, your Associate Counsel?

Mr. NUSSBAUM. I may have told Steve Neuwirth, yes. He was a senior person on my staff. It's quite possible I told him.

Senator HATCH. Mr. Neuwirth, your Associate Counsel, whom you brought to Washington with you from your firm of Wachtell, Lipton, has testified that you told him that Ms. Thomases and the First Lady were concerned about law enforcement having unfettered access to the documents.

Could we put up that page—it's page 112 of the deposition—on the Elmo. Let me read lines 2 through 6.

Question: What did Mr. Nussbaum tell you about the conversation that he had with Ms. Thomases?

Answer: [by Mr. Neuwirth] While I don't remember his exact words in a very brief discussion, my understanding was that Mr. Nussbaum felt that Ms. Thomases and the First Lady may have been concerned about anyone having unfettered access to Mr. Foster's office.

Did you say that to Mr. Nussbaum or you just can't recall?

The CHAIRMAN. Mr. Neuwirth.

Senator HATCH. Mr. Neuwirth, excuse me.

Mr. NUSSBAUM. No, I have no memory of saying that to Mr. Neuwirth, but as I said in my statement, Senator, I always assumed that the First Lady, like any good lawyer in the White House, would not believe unfettered access to a lawyer's office was proper, but I have no memory of saying that to Mr. Neuwirth.

Senator HATCH. You do not have any reason to disbelieve Mr. Neuwirth's assertion there?

Mr. NUSSBAUM. Absolutely not. That is correct, Senator Hatch.

Senator HATCH. Did you talk to the President or the First Lady on either July 21 or July 22?

Mr. NUSSBAUM. No, I didn't—did I talk to them on either of those days?

Senator HATCH. Well, about this?

Mr. NUSSBAUM. About this, no.

Senator HATCH. At this time, Linda Tripp was Executive Assistant to the Counsel to the President. In other words, she was your principal assistant or office manager, is that a fair characterization?

Mr. NUSSBAUM. She was one of my senior secretaries is the more accurate way of—

Senator HATCH. She's testified before the Committee that she remembers you receiving a phone call from the First Lady during this time, and that's on page 23 of the transcript from her appearance before the Committee. Maybe we could place that up on the Elmo and let me just read the following from that.

Question: What about the First Lady, do you have a recollection of her having a telephone conversation with Mr. Nussbaum?

Ms. TRIPP. I don't have a clear recollection of the First Lady speaking to him during that time frame.

Question: Do you have some kind of a recollection of it?

Ms. TRIPP. I know at one point there was a telephone conversation between Mr. Nussbaum and Mrs. Clinton. I don't recall when that was.

Question: Do you recall that it occurred during this period of time in the day or two after Mr. Foster's death?

Ms. TRIPP. I thought so, yes.

Do you have any reason to question Ms. Tripp's recollection?

Mr. NUSSBAUM. All I can do, Senator, is give you my recollection.

Senator HATCH. But you don't recall?

Mr. NUSSBAUM. In my recollections, I don't recall such a conversation. I would note that even with respect to these questions, she first indicates that she doesn't have a clear recollection. Then two questions later or three questions later she says she thinks it was in that time frame. But whatever she said, all I can give you is my recollection and I don't have a recollection of such a conversation.

Senator HATCH. My time is up, but I thank you for your answers. The CHAIRMAN. Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Thank you very much, Mr. Chairman.

First of all, I just want to put on the record what I think are facts. There are tough, experienced, and even combative lawyers outside of places like New York, elsewhere in the country, who are also very capable. I think it's important to just add that dimension.

Mr. Nussbaum, I first want to complete the record on the questioning that Senator Hatch put to you from your deposition because the next question, on page 143, if you have it there?

Mr. NUSSBAUM. Yes, Senator.

Senator SARBANES. The question put to you was: Did she say people were concerned about giving unfettered access to the law enforcement people to the documents? And your attorney said those words, and Mr. Chertoff said, in substance, that they had that particular concern.

The Witness: No, no. What I remember, it was not a concern about giving people access to documents. There was a sense of this notion of people's privacy shouldn't be invaded, that kind of sense, that people were concerned that any procedure that's followed is done with appropriate regard for people's privacy interests.

Now, I want to ask you a bit about this concern about people's privacy. You and Vince Foster became close friends, I take it. Is that correct?

Mr. NUSSBAUM. Yes, Senator.

Senator SARBANES. Had you known one another before you went to work in the White House Counsel's Office?

Mr. NUSSBAUM. No, as I said to Senator Hatch, we met in December 1992. We sort of interviewed each other for the job, although he had the job before I had the job. While we are a different kind of people we, over the months, became quite close, even surprisingly so. I don't know, maybe he was an Arkansas litigator, a tough Arkansas litigator. I was a New York litigator as now the whole world knows. In the crucible of the White House, which we had to make fast decisions, a lot of times every day, trying to do our best, it sort of was like, I don't know, like combat maybe, like being in a foxhole together. Sometimes that tears people apart, but it didn't do that to us. We formed a very close professional relationship which got stronger and stronger as time went on.

Senator SARBANES. Now, did you speak at a meeting of all of the White House staff about Vince on the I guess it was the day after his death?

Mr. NUSSBAUM. Yes, it was the day after his death. It was July 21.

Senator SARBANES. Do you recall what you said?

Mr. NUSSBAUM. It was a very emotional time. I think I told a story which I've been telling now to this Committee about how the President of the United States was wise enough to first retain a Deputy Counsel before he retained a White House Counsel because he'd retained a great Deputy Counsel. I talked about that. I talked about our first meeting and maybe how we interviewed each other for the job, the kind of thing I just said to you.

This wasn't a prepared speech. I didn't have a lot of time. The President and I, I know we were sitting together, prior to going on to make this talk to the staff, and we were just telling Vince stories to each other, and I went out and I made this 5- or 10-minute talk telling these stories. Then the President came out and he was incredible. I mean, he spoke about his, you know, he didn't prepare either, but he was just magnificent speaking about Vince, about their growing up together in Arkansas and about throwing sticks into the ground, and he was, it was a very moving day, and a day that I'll remember for a long time, although I can't remember my words.

Senator SARBANES. Did you feel a sense of, well, even guilt, I guess, in the circumstances? I mean, here's a person you were close to, you were co-partners in this law firm. He had committed suicide, and were you feeling a sense of—I should have seen it, I should have done something to prevent it. Did I overload him with work? What?

Mr. NUSSBAUM. I never was asked that before in that way. There's been so many hearings and so many investigations, but no one's quite asked me that question.

I wish I, you know, yes, a little bit, a little bit. I felt I wish I could—I knew he was sad, depressed, now I would use that word the 3 or 4 weeks before. He wasn't functioning as well as he had functioned previously. He was very angry about the Travel Office matter, the way the Travel Office matter was portrayed and how the White House portrayed it in its management review report.

He was concerned about issues like that, and he wasn't as effective the last 10 days or so when we were in the very difficult process of selecting a new Director of the FBI and unfortunately having to fire, which is sort of unprecedented, the prior Director of the FBI.

It was not an easy time for me in the White House Counsel's Office, and Vince wasn't as helpful on those kind of sensitive issues, although he participated in the FBI thing to some extent, as he would have been, because he was sort of down.

After he died, after he committed suicide, I thought, you know, I wish—I kept telling him, Vince, we've got to finish the FBI thing. It's important that we get somebody into the FBI who will be universally respected by Republicans and Democrats who was the right kind of person for that job. It's a more important institution than virtually any other institution in Government. It's probably

more important than a Supreme Court appointment even, although that's usually important.

And I was so engrossed in that process for the first 3 weeks of July 1993, of trying to find the right person, trying to convince the right person to take the job, trying to convince the President who also would respect the various issues on this thing, trying to convince very important and significant U.S. Senators on both sides of the aisle that this is a good choice, I was so engrossed in that endeavor, so taken with it, that I kept putting Vince off. I said, Vince, we'll get to that issue. The Travel Office is not that important, nothing wrong happened, so the White House management review which criticized people who shouldn't be criticized, but we can deal with that; we'll deal with it. Just let me get through the FBI thing. Because that's important, that's important for the President, it's important for the country.

The last conversation I had with Vince is when he walked into my office. The last time Vince and I saw each other was at the Louis Freeh announcement in the Rose Garden, and then he came into my office.

I went back to my office and I was sitting there, turning on the TV set in my office, all puffed up, all proud of myself as if I had won two major trials in a row, and I turned on the TV, and there I'm flipping channels, and flipping between the Ruth Ginsberg hearings, which had just started, which I considered a major accomplishment because we now had de-demonized the Supreme Court selection process, we now will have a bipartisan examination and a friendly bipartisan examination of a Supreme Court Justice, unlike prior Supreme Court nominations, and we had done that by picking the right person. Also we had chosen someone to be head of the FBI who's being met with universal acclaim in the law enforcement community, in the defense community, on both sides of the aisle in the Senate, which would have to confirm his nomination.

I said to Vince, this is what had been driving that month, those last 4 weeks, the Supreme Court nomination was made in June.

When I turned on the TV set, and I flipped back to both channels, her hearing, and the announcement by the President in the Rose Garden with Louis Freeh and his family, and I said to him, which I did I think say in my speech maybe to the White House Staff later, I said, look, Vince, two home runs, we hit two home runs for the President and the country. He looked down and he said, yes, yes, something like that, and I was, you know, I was very proud and very full of myself so I got up, I said I'm going to have lunch, and I walked out of the office and I said, I'll see you later, Vince. I walked out, and obviously he must have been in great pain, and I didn't see the pain. I think about that from time to time.

Senator SARBANES. You've mentioned the concerns that you had about the examination of his office, and you've talked about executive privilege and attorney-client privilege, possibly some sensitive documents. How much of a concern was there for Vince Foster's family's privacy through all of this?

Mr. NUSSBAUM. It was a large concern. There was a concern. Our mind set was he committed suicide. Obviously, he was deeply de-

pressed and distressed. The notion of people rummaging through his private papers, his private papers I'm talking about, I'm not talking about Clinton personal files, just rummaging through his papers, his personal papers, his leases, that was a concern. And I recognized he was a high Government official and people are going to want to investigate this. There's been no suicide like this perhaps since James Forrestal. I understood that. I understood how sensitive this was. At the same time, I thought we could balance the interest. We could protect his family's personal privacy. I'm not just going to throw the door open to that office and let people read his personal stuff without somebody reviewing it first; not me, his family's personal lawyer, and making a judgment. Yes, there was a concern about privacy in that sense.

Senator SARBANES. Some have suggested, who've testified before us, that you were too intimately personally involved in this matter for you to have a completely objective judgment capability. There has been testimony to that effect.

Mr. NUSSBAUM. I understand, I understand.

Senator I don't believe that. We knew each other for 7 months. I've testified that we had grown close and we were close. I still get choked up about his death, there's no question about that. And I may, if I can't prevent it, can get choked up at this hearing even when I talk about his death. But while we were professionally close, he wasn't my brother, although sometimes, you know, we were close. I was a pallbearer at his funeral. He wasn't a life-long acquaintance of mine. And I, yes, I was sick with grief the night of July 20, but the morning of July 21 and thereafter, I was functioning. I wasn't paralyzed by emotion, I wasn't paralyzed by grief. I was functioning as a lawyer who had to deal with a crisis.

All my life, my 30 or so years at the bar, I have functioned with major crises on behalf of other people with respect to this thing. My mind was focused. I was thinking about the issues. I wasn't walking around crying, I was not distraught with guilt. I was sad, I'm still sad, I'll always be sad, but I was functioning, I was dealing with what I had to deal with as my job as White House Counsel. So I was not disabled in any way from function at that time because of Foster's death.

Senator SARBANES. Do you think if you were to indicate that you felt your judgment had been impacted by the emotion and the closeness that that would lessen you as a professional person?

Mr. NUSSBAUM. No.

Senator SARBANES. As part of being a professional, this tough, experienced New York litigator, would be not to have your judgment affected. If you were to say now that your judgment had been affected, you would be lessened as a professional?

Mr. NUSSBAUM. Absolutely. I think part of being professional is emotion. Part of being a professional, Senator, is feeling, feeling for your client, seeking to do right by your client as your obligated to do. But my judgment wasn't affected by emotion or pity or sorrow or grief. I was functioning as a lawyer should function. I was seeing issues and I was trying to balance out difficult, competing considerations in a unique situation.

And, Senator, I have not had the luxury, I guess, or the pain at the same time of 2 years of re-examination of all those things that happened in July 1993.

This is now August 1995. My conduct has been examined and examined and examined by Special Counsel, by the House, by the White House, by the Senate, and by myself; mostly by myself. I've looked at everything I did during that period carefully and critically because I had to be prepared to defend it, and there's no point in kidding yourself about your own conduct and trying to make it look good, you know, make it better than it was. If you made a mistake, you had better say it because there's a lot of smart people out there who are going to say it in any event, so you better get out front of them and say it.

I've looked at my conduct now for a 2-year period since that time, and as I said in my statement, it may sound arrogant, and I'm fully prepared to admit mistakes when I made mistakes. In fact, not finding the note, that was a mistake. But I tell you, on the big calls, and I had to make a lot of big calls, I was right. I made the right judgments. I made the kind of judgments I think your lawyers up there would make if they were faced with this situation.

Senator SARBANES. Well,—

Mr. NUSSBAUM. At least that's what I think. They can speak for themselves.

Senator SARBANES. Well, that's what you think. We've had some very able people who have said that if you had added an extra dimension in the course of handling these matters, things might have been different. Now, I know you deny that at the end of your statement here today, and the point you make about this coupling of two events that are really separated time I think is an interesting point but nevertheless, we've had some strong testimony here that things might have been done differently and therefore the situation might have been very different. In fact, that the consequences casting a cloud of suspicion over matters that would have a perfectly simple explanation to them.

You're concerned about the cynicism and that's an important concern to have. But given its existence, the insistence upon proceeding in a certain fashion, traditional fashion, if that's how one wants to describe it, in a traditional fashion, may in fact have ended up contributing to the cynicism.

You didn't want to accommodate to it, this existence, but under the circumstances, it might have been wise to make some accommodation, and the net result of that might have been less cynicism, rather than more. And that's one of the things I think we have to think through here very carefully.

Mr. NUSSBAUM. I understand and respect your point of view with respect to that, Senator, but I come to a different judgment.

Senator SARBANES. We understand that.

Mr. Chairman, I yield to Mr. Ben-Veniste.

The CHAIRMAN. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Mr. Chairman, Senator Sarbanes. Good morning, Mr. Nussbaum.

Mr. NUSSBAUM. Good morning.

Mr. BEN-VENISTE. Let me turn your attention to the night of the 20th when you learned that Vince Foster was dead. What were you told and by whom?

Mr. NUSSBAUM. I was told, I was at Galileo's. My beeper went off. I went to the phone and I thought I was getting another congratulatory call on the Louis Freeh, and I got to the phone, I picked up the phone. They said that the White House is calling. I knew it was the White House that was calling, obviously. Mark Gearan, I believe, was the one who was on the phone with me. Mark said, Bernie, they just found Vince's body, he committed suicide. I think I started crying.

Mr. BEN-VENISTE. Did you go to the White House?

Mr. NUSSBAUM. Yes, I immediately, we were at the end of the dinner, my wife and my guest, we all arose from the table, we hurried out of the restaurant, we jumped into a cab. We took the cab to the White House.

I didn't have my pass with me, my White House card pass which allows you to go anyplace in the White House, and for a moment I was concerned that I could not get into the White House. But then when I got to the door, I forgot that people knew me at the White House, so they let me in. The reason I always wore my hard pass was because I was in charge partly of White House security. I was in charge to sort of set an example to everybody to wear their hard pass.

There were certain White House aides that were so well-known that they don't like to wear their hard pass, and they can get into the White House obviously, but I was always setting an example to them. This is the one time I didn't have my pass with me because I didn't think I was going to the White House, so I was now upset with myself that I didn't have my pass.

Mr. BEN-VENISTE. Let's get to the question of White House passes, because at some point that evening, when you went to the White House Counsel's suite in which your own office was located, you observed that Patsy Thomasson was there in the office, correct?

Mr. NUSSBAUM. That's correct.

Mr. BEN-VENISTE. Would you describe the scene as you arrived?

Mr. NUSSBAUM. Yes, I walked back to the West Wing after the President departed to go see the Foster family, and as I said, it occurred to me I must call my staff before they hear about this on the news, so I started walking over. Then it occurred to me that maybe he left a suicide note, so that's when the thought came to me, I better, I'm going to go into Vince's office.

I arrived at the Counsel's suite, and a light was on in Vince's office. The door of the suite was open and the light was on in Vince's office which surprised me a little bit. It was late at night. I had left early that day. I wasn't the last one who left. I left for dinner. I turned to the right, I walked into Vince's office, and I saw Maggie Williams sitting on the sofa crying, and I saw Patsy behind the desk. I was sort of surprised a little bit.

I said, you know, what are you doing here. My first, you know, you know—and Patsy looked up at me and she looked fairly distraught and she says, we just got here and we're looking for a note, see if he left a suicide note.

Let me tell you, when she said that to me, that was a human reaction. I was going to look for a suicide note, I had thought about the same thing, I was going to look for a suicide note. Now why, you know, why did he die? I mean, what was on his mind, you know, why, did he leave a note.

Mr. BEN-VENISTE. Did it immediately occur to you to think, Mr. Nussbaum, does Patsy Thomasson have White House clearance, does she have a White House pass, is the paper work all done for her White House pass?

Mr. NUSSBAUM. No, it didn't enter my mind. As Maggie Williams said here, and very effectively, that was not a night about passes or documents. It was a night of great grief. But in any case, Patsy Thomasson does have a White House pass. Patsy Thomasson can go into the Oval Office. Patsy Thomasson can go into any office in the White House. She has that kind of pass. In fact, Patsy Thomasson runs, on an administrative level, a lot of those offices. It didn't occur to me, once she said suicide note, you know, I'm looking for a suicide note, I understood that she was having the same human reaction that I was having.

In any case, she said she had just arrived and she was like, I walked over to stand next to her, and we both just looked at surfaces; we didn't look at any files. Patsy Thomasson had said to me, Bernie, let's pull out every file in this office, Supreme Court files, Louis Freeh files, Janet Reno files, you know, National Security files, and let's read them all to see. I said, no, Patsy, that's not something you can do. That's something I can do, but that's not something you can do. But that's not what was going on.

Mr. BEN-VENISTE. Did anyone, to your knowledge, on the night of the 20th, remove anything from Vincent Foster's office?

Mr. NUSSBAUM. No one removed anything from Vincent Foster's office, to my knowledge, on the night of the 20th.

Mr. BEN-VENISTE. Let me go to the procedure that you have described that you arrived at as a compromise between the strict rights that you have indicated the White House had in the matter in terms of safeguarding the materials in Mr. Foster's office, and obligations, as you've testified, and the legitimate requests of law enforcement. First of all, what did you understand, and from whom did you understand it, were the police searching for in connection with Mr. Foster's office?

Mr. NUSSBAUM. I understood, from the Park Police, I don't remember the names of the people, and I also understood from my discussions with the Justice Department, that they wanted to search Vince Foster's office to see if there was a suicide note or some other, an extortion note, perhaps, or some other such document which reflects severe mental anguish.

As somebody said, I think at these hearings, an appropriate phrase, a note which said "goodbye cruel world." You know, to my wife and children and to Bernie Nussbaum, even or to somebody, you know, I'm leaving this world because. I can't take it anymore because. That's what the search was for. That's what I understood the search was for. That's what I was told by the law enforcement authorities.

Mr. BEN-VENISTE. Now as the search in fact proceeded under your terms, as you defined the procedure that would be employed,

did the materials for which the Department of Justice attorneys or the Park Police there present, or the FBI, expressed an interest broaden in some respects?

Mr. NUSSBAUM. That's correct. That's correct.

Once I started describing documents during the course of the search, I would say this is a log of his phone calls, some recent phone calls, I described it like that. The Park Police or the law enforcement people would say, we might want to take a look at that. We want to see who he talked to recently. I said, sure, OK, I'll put it aside. I want to look, I want to examine that to see if there's anything privileged or confidential or anything inappropriate with respect to that, but I'll put it aside.

So you're correct, Mr. Ben-Veniste, the search broadened to some extent during the course of the search as requests were made, and I was open to any request that people wanted to make. I encouraged them.

Mr. BEN-VENISTE. So would it be fair to say that rather than taking a completely passive or, as we've heard, cigar store Indian role, that there was some interactive relationship going on during the search that resulted in the identification of additional materials than those initially requested, which were ultimately made available to the police?

Mr. NUSSBAUM. That's correct.

Mr. BEN-VENISTE. Was it your understanding, Mr. Nussbaum, that all of the materials identified by the police, again having in mind, you were the person who identified the materials, were all of those materials that were requested made available to the police?

Mr. NUSSBAUM. They were.

Mr. BEN-VENISTE. We have heard a good deal of testimony about your capability and competence and focus and Mr. Heymann's capability and competence and focus. And in your statements and Mr. Heymann's statements, you are mutually flattering. Indeed, Mr. Heymann testified in substance, as I recall, that if he or one of the Senators on this Committee wanted a competent, capable, tough lawyer to represent them, then Bernie Nussbaum would be their man.

But by the same token, you have congratulated Mr. Heymann on being an experienced and honest individual, and I have known you both for most of my professional life. How do you explain the difference in the approach between what you regarded as the appropriate way to go about handling the request for materials from police and Mr. Heymann's?

Mr. NUSSBAUM. It's a good question, Mr. Ben-Veniste, it's a very good question. Mr. Heymann sort of stems, he has had a very distinguished career, Phil has. He was a leading professor at the Harvard Law School, he was a colleague of mine on the Harvard Law Review, he was a year ahead of me in law school. He was a case editor or note editor before I was note editor of the Harvard Law Review.

He has had a brilliant career in academia. He has been an advisor to law enforcement all over the world, as he testified. He has been in the Government in the Justice Department in sensitive po-

sitions, Assistant Attorney General in charge of the criminal division. He worked on Watergate as you did, and as I did.

The one thing he hasn't done has been a lawyer in private practice representing clients very much. I don't think Phil really has ever been in private practice for any length of time. His career has been spent differently.

My career's been spent in Government in part, but mostly in the private world. I frankly don't think, and that's why I'm surprised at his testimony a little bit, that he places the same kind of weight that you must place on these rules, on the code, which I have in my briefcase here, the Code of Professional Responsibility, which ethically mandates lawyers to act in a certain fashion, which ethically mandates them to preserve the confidences of their clients and to preserve their ability to claim privilege.

Now remember here, we didn't ever claim privilege and ultimately we turned over everything that was asked for. But somehow that seems to him not all that significant. Maybe the explanation is he hasn't lived in the world where that's all that important. He recognizes the existence of executive privilege, which the White House clearly has, because that's the world he sort of has lived in.

He claims things like you can overcome waiver, Phil testified to this effect. It's interesting because it's the kind of thing a professor might testify to, but a lawyer, who deals with the nitty gritty of this everyday, would never say you could overcome waiver by entering into an agreement.

Any lawyer in private practice knows that agreements, that something you do will not waive something, will not stand up. There's this Westinghouse case in the Third Circuit recently. I mean, people make agreements all the time, or sometimes with Government agencies, like the SEC, a major corporation making an agreement with the SEC, will show you something but it does not waive anything. The SEC says, sure, show it to us, it won't waive anything. Lo and behold, a year later in a class action or some other action, a Circuit Court of Appeals said, uh oh, once you show it, it is waived. The SEC could agree up and down, you have waived it.

It's tricky. That law that there's a concept of limited waiver, or how much have you waived. It's a very tricky concept. Phil seems to think, oh, you just write an agreement and maybe it'll cure the waiver problem. It doesn't cure the waiver problem. I see that from my background; he doesn't see it from his background, and that accounts, I think, for part of this clash of ideas that we now have, that he and I now have, although I have great respect for him.

Mr. BEN-VENISTE. Thank you, Mr. Nussbaum.

Thank you, Mr. Chairman.

The CHAIRMAN. I just want to make an observation.

I have, for the first time, read your deposition. I made it a rule not to read depositions until the witness, or the morning that the witness comes in because inadvertently, if you have that knowledge, you can give it out, and I want to try to protect witnesses. And to those who have been subjected to all kinds of questions, as it relates to that, I think it's unfair, I think it's unreasonable and wrong, so I just want to set the record straight.

I'm going to refer you to page 139, the top of the page of your deposition, and I'm going to say to you that after hearing you respond to the Senator from Utah, Orrin Hatch, and reading your deposition, I absolutely believe, because your answers are that specific, that what you testified to in the deposition was your best and an accurate reflection of what took place.

It dovetails with the information that we have, and was a very legitimate attempt, because you even say, well, I'm not sure whether this conversation I am now referring to, and I'm going to read it into the record, with Ms. Thomases took place before or after.

In your testimony, I assume that you then say it took place before because you say, we were discussing the methodology, and I said, basically, don't worry, it will be done the right way. But here's what concerns me, and it's not your testimony, because I believe it, but Ms. Thomases'.

The conversation on the 22nd was that she asked me what was going on with respect to the investigation or the examination of Mr. Foster's office. She had heard there were discussions in the White House with respect to this issue on the 22nd, which you'll get to, and you're saying this to counsel, I presume.

Was everything OK, what was going on, and I said I am having discussions with people.

When we asked Ms. Thomases about this, it is as if this never took place. And you say, I remember saying, Susan, I've been talking with people. The thing that's distressing is that there are a number of phone calls and we asked her about the phone calls that she made to people in the White House, and she has almost no recollection whatsoever. She would have us believe that she was calling, and this is during the time when there were discussions going on, which has been verified by others, on the methodology to conduct this review, or the investigation or access.

But when Senators raise questions, she says, I wanted to comfort people, I wanted to see how they were feeling. This is where you have a half a dozen phone calls or more in a period of 2 hours, phone calls to Maggie Williams' office, phone calls to the Chief of Staff's Office, and at one point we're told, well, maybe interns answered and kept her on hold.

Then we have your absolute clear testimony today and in your deposition, and you say, I remember saying, Susan, I've been talking to people.

She tells you there were discussions in the White House.

I understand disagreements among lawyers, and I'm not saying this for your benefit because it's perfectly logical that lawyers may come to different understandings, and I certainly understand when someone does not completely recall an incident. But her testimony about those calls troubles me, and particularly the fact that she denies having discussed this situation with you.

She says that you—and I don't doubt that you're the person who raised it with her. You don't make a phone call and ask somebody what's going on, and then forget who initiated the conversation, when you, with some certain degree of specificity, recall her saying that there were discussions in the White House.

Now, when we couple this with that she was a member of the kitchen cabinet, I don't think it's unreasonable that Senator Faircloth, in his own inimitable style, inquired what Ms. Thomases—the person with the juice—was calling about?

We're going to narrow this because I am going to ask that we issue subpoenas for the telephone records of Ms. Thomases on various nights in question as it relates to these calls, and for the Rodham residence in Little Rock and for Margaret Williams' residence.

We've got a partial list. But here's what further troubles me. When she was asked about the people that she spoke to, she said basically at the White House she had spoken to only three people, and I'm referring to page 213 of yesterday's testimony. Ms. Thomases says, "I don't recollect saying that people were concerned to him, nor do I recollect talking to people who had expressed to me any concern." Then she said, "So when we talk about the universe of people, people whose opinions might be expected to carry weight with Mr. Nussbaum, is it fair to say the three people you have talked to before you talked to Mr. Nussbaum were the President, the First Lady, and Maggie Williams; right? And she says, "Yes."

So from whom did she learn of this concern, as it relates to the review? In other words, if it's only these three people, and she says that she did not discuss this with any of them, how did she learn about the review. I don't know if you can tell us. You said she didn't tell you who had informed her, is that correct?

Mr. NUSSBAUM. That's correct.

The CHAIRMAN. That's the troubling question. How is it that Ms. Thomases has no recollection when you told her that you were conducting a review, and she's only spoken to three people of consequence.

Mr. NUSSBAUM. Senator, obviously, you will have to make your own judgments and other Senators will have to make their judgments. I've known Susan Thomases a long time, Senator. She's a good, honest, and decent person. I have absolutely no doubt that when she testified as to her memory of the conversation, which differs from mine, she sincerely believes that her version of the conversation is correct.

Obviously, there is a difference between us Senator, but she is a truthful person, she is a good person, she contributes a lot to the Administration with her outside advice.

Senator, I don't want you to take back the nice words you said about me, after I say this.

The CHAIRMAN. No, I'm not, but you're getting me to the point where I might, now. Let's not——

Mr. NUSSBAUM. But let me just say, because I think the Senator's entitled to know my view of Susan Thomases. I have the highest view for her character and her credibility.

The CHAIRMAN. We understand that.

I yield to Senator Sarbanes. The question is how much time is left. Fine, we run a strict clock.

Senator Sarbanes.

Senator SARBANES. Senator Kerry.

OPENING COMMENTS OF SENATOR JOHN F. KERRY

Senator KERRY. Thank you, Mr. Chairman, Senator Sarbanes.

I would like to clarify one area, if I can, quickly, and then move on to an area that I find troubling.

But do I understand that during the procedure of the review of the files, that every single file in the office was reviewed at that time? Did you pull out every file that was in the office?

Mr. NUSSBAUM. Yes, that's my recollection. I either pulled it out or looked at it. In the credenza, I may not have pulled out every file, but then I would sort of move them and look at the file.

Senator KERRY. Did you describe the face pages of each and every file in the credenza?

Mr. NUSSBAUM. It varied. I didn't necessarily describe the face pages. I gave more, with the credenza, I don't know. I don't remember at this time.

Senator KERRY. The credenza is a place, so it's possible that you did not review all the files within the credenza?

Mr. NUSSBAUM. Oh, no, no. I reviewed all the files that were in the credenza.

Senator KERRY. In their presence?

Mr. NUSSBAUM. In their presence, yes.

Senator KERRY. Did you describe each file within the credenza?

Mr. NUSSBAUM. I said this is a tax file, or this is an investment file, like that. I didn't describe every piece of paper in the file. I would flip through the file to see if there was a suicide note or extortion note, but I would give a general description of the file and I would flip through the file. That was the process I followed, Senator Kerry.

Senator KERRY. Fair enough.

In the description of each file, did you describe the files that ultimately went into the box, the personal files? Did you say these are personal files of the Clinton's?

Mr. NUSSBAUM. Yes.

Senator KERRY. You described those. Did they ask to see any of those files?

Mr. NUSSBAUM. No, sir.

Senator KERRY. At no time did they ask to see those?

Mr. NUSSBAUM. At no time did they ask to see any of those files.

Senator KERRY. Did they ask them to be set aside for further review at a later time?

Mr. NUSSBAUM. They did not, Senator.

Senator KERRY. And it's your testimony that any files that were set aside, they subsequently did get?

Mr. NUSSBAUM. That's correct, Senator.

Senator KERRY. So no file that was sought was not at some point turned over?

Mr. NUSSBAUM. No file that was sought was not at some point turned over.

Senator KERRY. OK. Now I also would associate myself with the earlier comments of Senator Sarbanes on this question of cynicism and judgment. I don't want to spend a lot of time on it now. We will obviously at the end of it agree to disagree probably, but it's something I would like to maybe review later on.

I would like to turn to an area that I find particularly perplexing at this point in time, at least for me. Maybe you can help me through it. You set out very eloquently and in very strong terms, the degree to which you perceived a legal obligation with respect to the files in this office.

Mr. NUSSBAUM. Yes, sir.

Senator KERRY. You obviously take that seriously, and I don't doubt that at all.

You were concerned at one point about making sure the office was locked, correct?

Mr. NUSSBAUM. Yes, sir.

Senator KERRY. You were concerned at one point about a Ms. Betsy Pond having gone in there and sort of neatened up?

Mr. NUSSBAUM. Yes.

Senator KERRY. And you were concerned about retrieving the waste materials from the night of the 20th, in order to make sure that nothing had been overlooked?

Mr. NUSSBAUM. Correct. When it was brought to my attention that the trash had been removed, but could be recovered, I said of course recover it, bring it back.

Senator KERRY. So throughout the proceeding, all the way into the negotiations of the 22nd and 21st, you were proceeding with a strong sense of your obligations under the law to protect the documents and to make sure that there was an appropriate chain of custody and all of the legalities that were at stake. Is that accurate?

Mr. NUSSBAUM. I was concerned with preserving the documents, and—

Senator KERRY. Well, you were concerned that the Foster files went to the Fosters, that the Clinton files went to the personal attorney?

Mr. NUSSBAUM. Correct, that's correct.

Senator KERRY. That things were divided properly?

Mr. NUSSBAUM. That's correct, Senator.

Senator KERRY. Now what I find, and it truly just sort of leaves me asking questions, but I want to pursue it, is you had how many secretaries working for you?

Mr. NUSSBAUM. I had two secretaries working for me.

Senator KERRY. And how many lawyers working for you?

Mr. NUSSBAUM. About a dozen.

Senator KERRY. So in a sense, I mean, yours was a full-fledged legal office, counsel's office, correct?

Mr. NUSSBAUM. A little law firm, yes, Senator.

Senator KERRY. A little law firm. Now, can you tell me why it is that given the fact that you have these people there, and given the fact that you're concerned about the propriety of this, why do you—well, let me read you what she says.

Maggie Williams says, she's in another building, she's in room 100 of the Executive Office Building, and you call her over there and she says, according to her testimony, and he called me, Bernie, and he said, I have their personal files, or I have the Clinton personal files, get them to Bob Barnett, or will you get them. That was the gist of it. I said, OK, I'll be over in a little while.

So she comes over and she says, before I left my office, I'm sure I called Barnett to tell him I was going to get the files. And she says, I'm supposed to be sending you the personal files of Clinton when you're ready. He says, when you're ready, I'll send somebody over to get them.

Here we are with that testimony, and I'm left asking myself, why Maggie Williams? Why would you call Maggie Williams to send the files over? Why not have your secretary call? Why not have one of the other lawyers make the arrangements? Why not ask Mr. Barnett to come over and take them directly from you?

Mr. NUSSBAUM. Senator, first, Maggie Williams, while she may have been in the Executive Office Building, her office that she normally uses is right down the hall from my office. I didn't know where she was when I said, get Maggie Williams. In fact, indeed, Maggie Williams is one of the people in the White House physically, in physical proximity, the closest to me, not the furthest. She's from, her office is probably, from where my office was to where you're sitting right now. So she's fairly close.

Now it's true that, at this point, she was in the EOB apparently, but I didn't know that. One, I was asking for somebody who's fairly close to me physically. But number two, even more important than that, that's not really the key thing, is that she is to me sort of the chief of staff of the First Lady and the representative of the First Family in effect. That's how I saw her. She's one of their chief aides, Mrs. Clinton's chief aide primarily.

So it was a natural—and I have some differences of recollection because I thought I was fairly certain that the Clinton's would want to send these files to Williams & Connolly, Bob Barnett, as you talked, but I wasn't positive. My recollection is, and I know Maggie's testimony is not the same as mine in this regard, which I think, by the way, sometimes is proof of truth, not of falsity, but that's a separate issue. My recollection is that I was not certain it should go to Barnett, that Mrs. Clinton or the President may decide, no, I want to send these to somebody else in Arkansas or elsewhere, and that she should check with Barnett—she should check, excuse me, with the Clinton's. So I recall, when she came over, I said, look, Maggie, I have their personal files here. I just sent Foster's files to his family lawyer. I'm sure the Clinton's would want these files, I'm sure the Clinton's would want these files to go to their personal attorneys now. You check with them. See, I remember saying, you check with them.

She's the natural person to check with them; not everybody can talk to the President and First Lady. I said you check with them, whether they want them to go to Barnett and you take them, and if they decide they want them to go to Barnett, send them to Barnett. That is why I called Maggie Williams and that's what I had in my mind.

Senator KERRY. Do you understand the legitimacy of the questions raised by the differences here?

Mr. NUSSBAUM. Yes, of course, I understand that.

Senator KERRY. I can understand what you're saying about the proximity, but even given that, every step of what she has said she did differs with your recollection in the following sense:

She then says that she was going to get them over there but she got tired, and it was only because she was tired that she raised the issue with the First Lady and then said, I'll send them over to the residence as an alternative to sending them over. Now is that totally different from your recollection?

Mr. NUSSBAUM. Yes, it's somewhat different from my recollection.

Senator KERRY. Well, isn't it totally different? You're saying that you said to her, check with them to see where they should go?

Mr. NUSSBAUM. That's correct.

Senator KERRY. She is saying that she never made any call except to ask where they go because she decided not to put them somewhere else, send them over to Barnett. She didn't say, in any regard, gee, I think I have to call the First Lady, or we have to do this with relationship. She almost sort of separated herself from that.

Mr. NUSSBAUM. I don't know exactly. I haven't read her testimony and I didn't watch it all. I know some of it, but I don't think we're that far apart, Senator. I know you may feel that, but I think——

Senator KERRY. No, I'm not. I don't feel anything. I'm trying to understand it.

Mr. NUSSBAUM. We were both, my major objective——

Senator KERRY. Here's what she said. I tell her I was sending the boxes to Bob Barnett, but it's getting late and I'm tired, and I'm going to take them to the residence, where should I put them. There's no inquiry there about do you want them, do you not want them, do you want to see them?

Mr. NUSSBAUM. Senator, all I can do is testify to my recollection. My recollection is, Maggie, I have the Clinton personal files here. I just sent the Foster personal files to their personal lawyers. I think the Clinton personal files should go to their personal lawyers. Check with the Clinton's as to whether they want them to go to Bob Barnett, I think they do.

Senator KERRY. Do you know how the files ultimately got there?

Mr. NUSSBAUM. No, I don't.

Senator KERRY. They got there by messenger on Tuesday.

Mr. NUSSBAUM. Oh, I do know they got there on Tuesday, yes.

Senator KERRY. So why, if they could get there by messenger on Tuesday, could they not get there by messenger on Thursday or Friday?

Mr. NUSSBAUM. They could have gotten there by messenger on Thursday or Friday, but it was late in the day and I thought the reason Maggie was doing it was because she wanted to check with the Clinton's.

Senator KERRY. Well, my time is up. I wanted to clarify this a little more.

Mr. NUSSBAUM. I'm not sure I have, Senator, but I've tried my best.

Senator KERRY. I appreciate that.

The CHAIRMAN. Would the Senator like another minute or two to clarify it? This does not confer on us any automatic right to pursue the same thing, but I think if the Senator wants——

Senator KERRY. I'll come back after.

The CHAIRMAN. OK.

Senator Shelby.

OPENING COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you.

Mr. Nussbaum.

Mr. NUSSBAUM. It's nice to see you again, Senator.

Senator SHELBY. It's good to see you. It's always good to see an able New York lawyer.

Mr. NUSSBAUM. What is this New York business with you guys? I expect you to defend me, Mr. Chairman.

The CHAIRMAN. I am. This picking on New York, they make us out to all be aggressive. I've been so unaggressive and Bernie's been very laid back today.

Senator SARBANES. If the Senator from Alabama would yield, I tried to establish at the outset that there were a lot of able lawyers elsewhere besides New York.

Senator SHELBY. Absolutely, but there are also a lot of able ones in New York, and Mr. Nussbaum's one of them.

Mr. NUSSBAUM. Thank you, Senator.

Senator SHELBY. Now, Mr. Nussbaum, how long were you in private practice prior to January 1993?

Mr. NUSSBAUM. I was in private practice, I was an Assistant U.S. Attorney in the Southern District of New York from 1962 through 1966, taking time out to serve in the U.S. Army. I was in private practice then from 1966 to 1993, taking time out to join my friends, Mr. Ben-Veniste and other people, and Mr. Heymann in Washington in 1974, to work on the Watergate matter.

Senator SHELBY. You were counsel, one of the counsel on the Watergate hearings, is that right?

Mr. NUSSBAUM. I was Senior Associate Special Counsel to the House Judiciary Committee Impeachment Inquiry.

Senator SHELBY. So you had not only your private practice experience that you related, but you also had that unique experience on Watergate?

Mr. NUSSBAUM. I certainly did.

Senator SHELBY. Now, when you came to work, when was that, January 19? For the Government, when did you come to work?

Mr. NUSSBAUM. Well, I officially went on duty, although I started work a little earlier, January 20, 1994.

Senator SHELBY. Is that the date of the Inauguration?

Mr. NUSSBAUM. Excuse me, January 20, 1993. That's the date of the Inauguration.

Senator SHELBY. So when you went on duty, you went on the payroll of the U.S. Government, did you not?

Mr. NUSSBAUM. Yes, sir.

Senator SHELBY. You ceased to be a private attorney then, did you not?

Mr. NUSSBAUM. That's correct.

Senator SHELBY. Back in July 1993, on July 20 and 21, subsequent dates, you were on the public payroll working as the White House Counsel here in Washington, DC. You were Counsel to the President of the United States?

Mr. NUSSBAUM. I was Counsel to the President of the United States.

Senator SHELBY. OK.

Mr. NUSSBAUM. Which I was highly honored to be.

Senator SHELBY. Sure. It's a great job, a highly respectful job.

Mr. NUSSBAUM. Tough job.

Senator SHELBY. Tough job is right.

Now, Mr. Nussbaum, during this time from January 20, 1993, were you engaged, in any way, as a private attorney for anyone?

Mr. NUSSBAUM. No, Senator. I had my hands full with the job I had.

Senator SHELBY. The answer is no.

Mr. NUSSBAUM. The answer is no.

Senator SHELBY. So back on July 20, 1993, you were totally a Government lawyer working for the President of the United States as his Counsel?

Mr. NUSSBAUM. With a specific function, yes.

Senator SHELBY. That's right, but on the Government payroll?

Mr. NUSSBAUM. I was on the Government payroll.

Senator SHELBY. That's what I'm asking you.

Now, let's go back to a couple of things you said. You said that the day after Vince Foster's death, that you were functioning as a lawyer again? In other words, you knew you had a job to do as White House Counsel, and that your mind, quote, "was focused," is that right, just a few minutes ago?

Mr. NUSSBAUM. Yes.

Senator SHELBY. Your mind was focused.

Mr. NUSSBAUM. My mind was focused.

Senator SHELBY. Mr. Nussbaum, you carry quite a memory with that mind, don't you?

Mr. NUSSBAUM. Yes.

Senator SHELBY. Historically wouldn't you say you've got a good memory?

Mr. NUSSBAUM. Absolutely, I do.

Senator SHELBY. Let's go back to when you first had a conversation, let's go in sequence, if you'll recall, with Mr. Heymann. When did you call, if you did, Mr. Heymann regarding the investigation of the Vince Foster's death?

Mr. NUSSBAUM. I believe I called him mid-day, maybe even early in the day, 11:00 or 12:00 o'clock, maybe as early as that, on July 21, to ask him have the Department of Justice coordinate the various investigations which I believed would take place.

Senator SHELBY. How long did this conversation go on?

Mr. NUSSBAUM. Very short, Senator.

Senator SHELBY. Very short. Was that the only conversation you had with Mr. Heymann that day?

Mr. NUSSBAUM. I believe so. Obviously, he said he would think about it, so I did receive information, although he indicated that he was going to do it in all probability. It's possible he called me again to say OK, but I don't remember that. I remember that conversation and receiving, at some point, either in that conversation or thereafter, an affirmative answer to my request.

Senator SHELBY. Subsequent to the conversation or conversations, did Mr. Roger Adams and Mr. David Margolis from the Justice Department come over to the White House?

Mr. NUSSBAUM. Yes, sir.

Senator SHELBY. Was that the same day?

Mr. NUSSBAUM. It was.

Senator SHELBY. What time of the afternoon was that?

Mr. NUSSBAUM. It was late in the afternoon. It was 4:00 o'clockish, 5:00 o'clockish, it was after I spoke to the entire White House staff with the President, 4:00 or 5:00 o'clock, maybe even later.

Senator SHELBY. Who was present at this meeting?

Mr. NUSSBAUM. Let me tell you the people I remember and this may not be everybody. Myself, Steven Neuwirth, Cliff Sloan, two Associate Counsel who have appeared before you, the three of us, Roger Adams and David Margolis, an FBI agent, who I now believe to be Agent Salter, and a number of representatives of the Park Police whose names, at this point, I do not recall.

Senator SHELBY. Mr. Markland, maybe?

Mr. NUSSBAUM. Maybe, if he says he was there, yes. Also probably a Secret Service agent, because they usually were conducting the other law enforcement officials around the White House and they remained at some of these meetings.

Senator SHELBY. Did this meeting take place in your office?

Mr. NUSSBAUM. It took place in my office, the White House Counsel's Office, yes.

Senator SHELBY. Was the purpose of the meeting to discuss the initial ways you would investigate the death of Vincent Foster?

Mr. NUSSBAUM. It was to discuss two things.

Senator SHELBY. What were they?

Mr. NUSSBAUM. One was their desire, need to interview members of my staff promptly, and I readily agreed to that. I was bending over backward throughout this process to try and—

Senator SHELBY. Just go ahead, instead, go ahead and say what you did.

Mr. NUSSBAUM. Sure.

Senator SHELBY. OK, first you said they wanted to interview your staff and you said you agreed to that, right?

Mr. NUSSBAUM. Yes.

Senator SHELBY. All right, what's the second thing?

Mr. NUSSBAUM. Second to discuss their desire and their need to search Mr. Foster's office for a suicide note or some similar such document.

Senator SHELBY. How long did this discussion go on regarding that, in your judgment?

Mr. NUSSBAUM. Between 45 minutes and an hour, in the area of 45 minutes.

Senator SHELBY. What did you say to Mr. Margolis and Mr. Adams and others present regarding the search of the office on this occasion, this first occasion?

Mr. NUSSBAUM. I think I mentioned some of this earlier, but I will repeat it, Senator.

Senator SHELBY. Sure.

Mr. NUSSBAUM. I understand.

The atmosphere was friendly. I'll tell you what I said.

Senator SHELBY. Just tell us what you said.

Mr. NUSSBAUM. I understand, but I have to do it in my own words in my own way, Senator.

Senator SHELBY. Sure.

Mr. NUSSBAUM. The atmosphere was friendly and understanding on both sides. What I said was, look, I understand your desire to go into Vince's office to search for a suicide note.

I was there. I had total—I was there the night before. I didn't see a note, but my search was very cursory. I understand your need and desire to go in. But Roger, David, I was talking primarily to them, this is a lawyer's office. There is sensitive materials in that office. There's confidential stuff, there is privileged stuff in that office.

It's covered by all sorts of, you know, I had obligations. I have obligations as a lawyer as Counsel to the President, as Counsel to the President in his official capacity, not as a private lawyer, but as an official capacity, I have certain obligations that affect me as a Government lawyer, as well as the same kind of obligations when I was a private lawyer.

I have to work out some way of dealing with these issues with you. I just cannot let you go in and open the door and look at every document in the office. And they were, not surprisingly because they're good people, they were understanding. They said we understand it, Bernie, we understand that you have these obligations as Counsel to the President, as a Government lawyer, you have these obligations because these obligations apply also to a Government lawyer, but they said, maybe we can work something out.

Senator SHELBY. They also had an obligation and responsibility, did they not?

Mr. NUSSBAUM. They had an obligation too, and I understood that. They had an institutional obligation which all law enforcement people have, so we then had a discussion of how to discuss various options. That's what I remember about the conversation. We discussed the kind of options I laid out before. Opening the office, letting them see everything without anybody in there with them. Shutting the office, letting them not go in. They didn't like that, I didn't like that. Showing him the first page of a document or something more so they can make determinations of what was privileged or confidential or relevant, they liked that. I said I would consider it, but I didn't like it that much, but I will consider it, or having me go in with them, breaking the seal together, walking into the office.

Senator SHELBY. Excuse me a minute. Breaking the seal together? But there's been testimony by you and others that the seal was already broken. People were there the night before looking through the office.

Mr. NUSSBAUM. We sealed the office, Senator, we secured the office.

Senator SHELBY. Breaking it again. OK, secured.

Mr. NUSSBAUM. I shouldn't use the word "sealed." We secured the office on the morning of July 21. So I discussed that option with them, the option of us going into the secure office, and I would look at each document and I would give them some general description, and of course if I found a suicide note or something similar, I would turn it over to them. They didn't like that too much.

That's what we discussed, options. And we left, when we left, when we broke up the meeting—

Senator SHELBY. When you broke up the meeting, did you have an agreement?

Mr. NUSSBAUM. No.

Senator SHELBY. Did you have an understanding?

Mr. NUSSBAUM. No.

Senator SHELBY. What did you have? Why would they leave?

Mr. NUSSBAUM. We had an issue which had remained unresolved and which we agreed to meet the next morning to have further discussions. That is my memory.

Senator SHELBY. That's your memory to agree to meet again the next morning, but not your memory that you reached an agreement and agreed to meet the next morning to begin the search together?

Mr. NUSSBAUM. Oh, no. We knew there would be a search the next morning. We agreed there would be a search. But what we hadn't agreed on is would be how the search was conducted, the precise method that would be used.

The CHAIRMAN. I will come back to you, Senator.

Senator Sarbanes, I think to keep it a little more on the time and the clock, under the strictest of interpretations, we keep it to 10 minutes and then let someone finish, but I will come back to you in the next round. You'll lead off.

Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I yield to Senator Bryan. I do think that we ought to move it back and forth every 10 minutes, and since we have a number of Members who have been waiting, I think——

The CHAIRMAN. I understand that. I think sometimes for the sake of continuity I wish we had more flexibility, but I'm not going to detract from the hearings by arguing this now, so we yield.

Senator SARBANES. I think it's a reasonable point, and we've tried to accommodate it, but since we've had so many here today and they've waited so long, I think we——

The CHAIRMAN. All right.

Senator SARBANES. I yield to Senator Bryan.

OPENING COMMENTS OF SENATOR RICHARD H. BRYAN

Senator BRYAN. Thank you very much, Senator Sarbanes.

Mr. Nussbaum, listening to your testimony this morning, you are impressive, eloquent, you're a forceful advocate, and I was reflecting that a year ago, we had occasion to engage in a colloquy and then, unlike this morning where the issue has been privilege, sensitivity, privacy and what might constitute a waiver, then the issue was one of recusal, and you had some very strong views in advising Mr. Altman as to his obligation, in your view.

You were equally impressive that day. I must say that I disagreed with you last year in terms of your counsel on that, and I do find myself in some disagreement with the advice that you've given with respect to handling this issue. But I want to focus on a couple of things and then ask you a follow-up.

On the 21st, when you met with Mr. Adams and others to discuss the process by which the inventory or the search, whatever word you're comfortable with, who was present?

Mr. NUSSBAUM. Myself, Steven Neuwirth, Cliff Sloan, David Margolis, Roger Adams, Agent Salter of the FBI, an FBI agent. I

have learned in these hearings it's Agent Salter. I would not have remembered it before although I knew an FBI agent was present. Representatives of the Park Police, I believe Mr. Markland and another person, perhaps a Secret Service Agent, but I have no memory of that right now. That's my memory as to who was present.

Senator BRYAN. You have indicated repeatedly that it is your understanding that based upon the conclusion of that meeting, there was no agreement as to how the search in Mr. Foster's office was going to be conducted?

Mr. NUSSBAUM. There was a discussion of options. I said I would consider seriously one of the options, this first page option I'll call it, but there was no agreement as to how we would proceed. That's correct. We said we would meet the next day. We conducted the search, we agreed a search would be conducted the next day, and we would conclude the next day as to how the search would be conducted.

Senator BRYAN. I must say that I was somewhat surprised to hear, in response to a question or series of questions from Senator Hatch, your response that with respect to the memorandum of Mr. Adams, which was displayed on the screen, and thereafter a memo from Mr. Heymann, that was displayed on the screen, that with respect to Mr. Adams, that memorandum which purports to state what his understanding was on the 21st, was written a week later.

Mr. NUSSBAUM. That's correct. It was written after the note was discovered on the 26th and turned over that handwritten list, and turned over to the law enforcement authorities on the 27th. It was written thereafter.

Senator BRYAN. And that Mr. Heymann's memo came in February of the following year, 1994?

Mr. NUSSBAUM. That's correct. Mr. Heymann apparently sat down and tried to, which is legitimate to do, reconstruct events as he remembered them, but it was not a contemporaneous memo made at the time.

Senator BRYAN. You have used the word contemporaneous and that is the word that comes to my mind. My experience as a private practitioner is less impressive than your own, but my understanding is generally when lawyers seek to make memoranda of events that they think may have some future significance, either in terms of their own attorney-client relationship, or conversation with other counsel, or actions they've taken with respect to the matter, that they attempt to dictate that as reasonably contemporaneous as possible that same day or the following morning. Is that your understanding impression?

Mr. NUSSBAUM. That is. If a lawyer wants to memorialize something that happened because he thinks it's important to memorialize it, he would go back and make a memorandum contemporaneously shortly after the event happened.

Senator BRYAN. My purpose is not to impugn anybody's integrity, but it is noteworthy that this is made a week after the event which is being memorialized occurred.

Mr. NUSSBAUM. Yes, I think it is noteworthy.

Senator BRYAN. And with respect to Mr. Heymann, is it fair to say that in terms of his attempt to describe what his understanding was, that he not being present, that his understanding would

have to have been made based upon hearsay, that is, what someone who was there told him their understanding was?

Mr. NUSSBAUM. That's correct, Senator.

Senator BRYAN. So he can have no understanding in terms of the basis of the purported agreement or understanding firsthand?

Mr. NUSSBAUM. That's correct, sir.

Senator BRYAN. OK. Now, I can understand, as you've indicated, that people can have different interpretations and you've indicated that several people that attended that meeting reached the same conclusion that you did, namely that there was in fact no agreement. What I find a little bit more troublesome is the following day, and let me take you through my understanding of the sequence, and ask you to clarify this and comment upon it.

You had a phone conversation, as I understand, on the following day, the 22nd, at the time that Margolis and Adams were there and about ready to participate in this search or review or inventory. During the course of that conversation, it has been related that Mr. Heymann said to you, in effect, Bernie, I think you're making a mistake. I don't think this is the way you ought to handle it. My understanding of the conversation, as he relates it, is that you said to him, in effect, well, let me think about this—we're talking about the 22nd.

Mr. NUSSBAUM. I understand, Senator.

Senator BRYAN. Is that essentially correct?

Mr. NUSSBAUM. It is essentially a correct version of Mr. Heymann's testimony. You stated it accurately, sir. My memory is not different, it's vaguer on this point. I do not remember that kind of conversation with Mr. Heymann, but I do not mean to suggest that it didn't take place.

From my point of view now, thinking back, if Mr. Heymann says that was the conversation, I have no reason to dispute it. It's not the kind of conversation I will say clearly did not take place.

For example, during the course of my deposition, Mr. Chertoff said to me, did Mr. Heymann ever say to you that you're misusing the Justice Department, talking about another conversation, and I said, no, Mr. Chertoff, he never said that to me, and if he did say that to me, I would remember it, and it wouldn't be true, but I would remember it. So that didn't happen.

I cannot say that with respect to this conversation. You know, if Mr. Heymann says he said what he said to me, I'm not saying categorically that it didn't occur. I just don't have any memory of it, and if I said to Mr. Heymann that I would get back to him at some point, it is my normal practice to get back to people. I don't duck phone calls. I answer my phone calls and I return my phone calls. If I said that, then I did make another mistake, it obviously slipped my mind in the course of that day, if I promised to get back to him, I should have gotten back to him, and I apologize to him for not getting back to him when I changed my position, but I would have gotten back to him. But I just don't remember promising to get back to him, and if I did promise to get back to him, I don't remember continuing to think about that as the day went on.

Senator BRYAN. Even if there was not a promise, let me just say as an aside to you, Mr. Nussbaum, I have a high regard for Mr. Heymann. I thought he acquitted himself well, and clearly projects

himself as a person of considerable experience and integrity, in my view. But, again, to drive the point, I don't know whether there was an express promise that you were quoted as having said, but clearly the implication, I can't recall the exact words, were that he proposed an alternative course of action or suggested that I think you're about ready to make a mistake, Bernie.

The implication of his testimony was that you were going to consider the proposed course of action and maybe not an express promise by you to call back, but clearly the impression left, let me think about that, Phil, or however you refer to him.

Mr. NUSSBAUM. That's correct.

Senator BRYAN. It would give you the impression, if you're thinking about it, he being you, he'll get back to me.

Mr. NUSSBAUM. Yes, and I think there was a miscommunication and maybe a misremembrance on my part to call him back.

Let me say something. You know, I was thinking about it. I thought about it from the night before. I thought about it that morning. I thought about it in the course of my discussions with Jack Quinn and others. As I've testified to, and I reached a conclusion that that was not the right way to do it; namely, letting them see the first page of each document.

Mr. Heymann also said something else at these hearings which was important, and here I agree with him. This idea of an agreement, Mr. Heymann is sort of mad at me, I think, that's too strong a term, that I didn't call him back, that I owed him a call back and I didn't call him back. As I said, I'm sorry about that. I just didn't remember I had to call him back.

But he also said at these hearings something which I do find interesting. He said he didn't consider this agreement with some of these people as some sort of binding agreement, that it's signed in blood or something, and it couldn't be overridden in some fashion, or it couldn't be changed.

So that's the way I felt too. I didn't believe we had an agreement, but even if we did have an agreement, or even if they walked away believing we had an agreement basically, that agreement could not override what I sort of conceived to be my solemn professional obligations contained in books like this. This is the Model Rules of Professional Conduct, it couldn't override that.

If I had made an agreement the night before, which I didn't, but if I had made an agreement, I would have said to them the next day, fellas, look, I may have said we'll do it this way the night before, but I can't do it. I thought about it some more. This will violate my ethical obligation as a lawyer. That agreement no longer holds. Now we didn't have that conversation because we didn't have an agreement, but if we had an agreement, that's the kind of conversation we would have had.

Senator BRYAN. I think, Mr. Nussbaum, that Mr. Heymann, in the idiom of the street, was cutting you a little slack there on that hey, look, you had a right to change your mind even if there was an agreement.

Just by way of a concluding observation, I can see why he would be upset if he felt that, in effect, his staff was being used when he expected a phone call back from you. I mean, that would bother me.

Mr. NUSSBAUM. It would bother me too, and I understand——

Senator BRYAN. I think, clearly, he had that sense.

Mr. NUSSBAUM. I understand his upset in that regard.

Senator BRYAN. I note my time has expired.

Mr. NUSSBAUM. And I respect it.

The CHAIRMAN. Senator Shelby.

Senator SHELBY. Thank you.

Mr. Nussbaum, I just want to go right back to where I was, and I think I was getting into questioning you again, as Senator Bryan was, dealing with your conversation with the Deputy Attorney General of the United States at that time, Philip Heymann.

Mr. NUSSBAUM. That's correct, sir.

Senator SHELBY. Was it important to you as White House Counsel, that the Department of Justice be involved in this investigation regarding the death of Vince Foster, important enough for you to call them to get them involved? Is that correct?

Mr. NUSSBAUM. It was important to me that, if they agreed, they weren't ordered by anyone, to coordinate the investigations that would take place, if there was going to be more than one investigation. That is what was important to me.

Senator SHELBY. But your idea of coordinate was not Mr. Heymann's idea of coordinate, was it, obviously?

Mr. NUSSBAUM. No, I think our idea of coordinate was the same; our idea of how to conduct the search in the office is not the same, Senator Shelby.

Senator SHELBY. It was your idea for you to conduct the search and they to be window dressing?

Mr. NUSSBAUM. No, that was not my idea.

Senator SHELBY. Isn't that what happened, though?

Mr. NUSSBAUM. No, that was not what happened.

Senator SHELBY. That is not what happened?

Mr. NUSSBAUM. That is not what happened, Senator.

Senator SHELBY. You would be the only one that's testified that way.

Mr. NUSSBAUM. Oh, no, no, no.

Senator SHELBY. You and your Associate Counsel.

Mr. NUSSBAUM. No, Senator. I think anybody looking at it objectively, with all due respect, Senator——

Senator SHELBY. Well, we're looking at it objectively.

Mr. NUSSBAUM. I'm sure you're trying to, Senator.

Senator SHELBY. We're trying.

Mr. NUSSBAUM. I'm sure you are, Senator. The fact is, Senator, they weren't window dressing; they were participating.

What is happening is I was describing documents, we were talking. They would say, Mr. Nussbaum, even though we're looking for a suicide note, we would like to see that document, or we would like to see this document, or we would like to see that document. I would say, fine. I'll put it in a pile and I'll take a look at it later. Here, I'll put this in the pile. Here, I'll put that in the pile.

That's what we were doing, Senator. That's participation. That's not sitting like a cigar store Indian. That's not being——

Senator SHELBY. But that's not what really happened, though, was it?

Mr. NUSSBAUM. Oh, that's exactly what happened, Senator, and I was there and I know it.

Senator SHELBY. That's your selective memory.

Mr. NUSSBAUM. No, sir, Senator. It's my accurate memory.

Senator SHELBY. We need to focus on your memory. You said your mind was focused. I want you to focus on it just for the next few minutes. Mr. Heymann's a man you said you had a lot of respect for and you have known him a long time.

Mr. NUSSBAUM. I did, Senator.

Senator SHELBY. Would you put his integrity on the highest plane?

Mr. NUSSBAUM. I would, Senator.

Senator SHELBY. If he says, and he has testified under oath, that he had an agreement with you, Mr. Nussbaum, and while your recollection of the existence of an agreement or conversations with Mr. Heymann are unclear and vague, vague is probably a better term, Mr. Heymann notes in his testimony, was clear on both points.

In addition, as Senator Hatch has brought out here, in addition to Mr. Heymann's testimony, Mr. Adams' recollection was that he had an agreement. He was sent over by the Justice Department. Would you classify Mr. Adams as a man of integrity coming out of the Justice Department?

Mr. NUSSBAUM. Yes, sir. Yes, sir.

Senator SHELBY. An experienced trial lawyer?

Mr. NUSSBAUM. Absolutely, Senator.

Senator SHELBY. Mr. Margolis, is he out of the Justice Department?

Mr. NUSSBAUM. Yes, sir.

Senator SHELBY. Would you classify him as a man of integrity?

Mr. NUSSBAUM. I would, sir.

Senator SHELBY. OK.

The Park Police and the FBI, why is it, it's incomprehensible to me and I'm sure to some of my colleagues, but more important to the American people, that your memory seems to be vague, indefinite, and uncertain, yet these people, bright, experienced, no one questions their integrity or their motives, they have a clear understanding that they had an agreement as to how you would search the office. You, Mr. Nussbaum, were in charge and stayed in charge. Why is your memory so vague and uncertain?

Mr. NUSSBAUM. My memory is not vague. It's quite definite, and not at all uncertain, Senator. I just——

Senator SHELBY. But you've continued to say, sir, I don't recall, or it could have happened or——

Mr. NUSSBAUM. Oh, no, I don't Senator. I rarely say I don't recall.

Senator SHELBY. You said you don't have any recollection.

Mr. NUSSBAUM. I rarely say that. If I don't have a recollection, I say it. I think——

Senator SHELBY. I think I'm going to have to get the deposition and put it up in a few minutes, if I have time, and on your sworn testimony, how many times that you had.

Let's get back to the phone calls. How many phone calls did you have with Mr. Heymann at the Justice Department? How many on this Thursday?

Mr. NUSSBAUM. On Thursday?

Senator SHELBY. Yes, sir.

Mr. NUSSBAUM. On Thursday, as I said earlier to Senator Bryan, Mr. Heymann has testified that he had a call with me, and I don't dispute that testimony, although I have no memory of it, no specific memory at this point.

See, sometimes, Senator——

Senator SHELBY. Just tell me how many you had, what you recall having, not what Mr. Heymann said, what you recall.

Mr. NUSSBAUM. I do not recall the conversation that I had with Mr. Heymann on the 22nd. Mr. Heymann does recall that conversation; I don't dispute his recollection of that conversation. All I can do is give my best memory. Senator, you are correct.

Senator SHELBY. But you said your memory was good.

Mr. NUSSBAUM. Could I finish, Senator?

Senator SHELBY. Yes, sir.

Mr. NUSSBAUM. I agree with you, Senator, with respect to that call, that call on the 22nd, my memory is vague and indefinite with respect to that call, that's correct.

Senator SHELBY. Could it be selective too?

Mr. NUSSBAUM. No, Senator.

Senator SHELBY. Not at all?

Mr. NUSSBAUM. Not at all.

Senator SHELBY. Not at all.

Do you recall a conversation with Mr. Heymann speaking with you twice on the 22nd, first Mr. Nussbaum, in the morning, when he made it very clear that he was considering pulling his men, meaning Mr. Adams and Mr. Margolis, back from the so-called proposed search in the office, if you were going to have it your way. He then called later that night from his home to again, Mr. Nussbaum, tell you how upset he was that you had conducted the search over his objections. You don't recall either one of those conversations? Sir?

Mr. NUSSBAUM. I have no memory of those conversations.

Senator SHELBY. Do you remember the Deputy Attorney General, Mr. Heymann, telling you, and his testimony was that he was very, very angry, called you—let me finish.

Mr. NUSSBAUM. Senator, I don't remember.

Senator SHELBY. Well, just let me finish my question.

Called you at home later that night and says to you, you, meaning you Mr. Nussbaum, misused us, or something to that effect, and quote, "Are you hiding something?" Do you recall him saying, are you hiding something? You don't recall that, something so central, so indicting, and you don't recall this at all?

Mr. NUSSBAUM. Senator, Mr. Heymann never said to me on the phone, in words or substance, and I do recall this, never said to me on the phone in words or substance, you are misusing us, you are misusing the Justice Department. He never said that.

Senator SHELBY. Did he say, are you hiding something, Mr. Nussbaum? Could he have said that?

Mr. NUSSBAUM. Yes, he could have said that, but I don't remember that. I think it's something I would remember, but I don't remember it.

Senator SHELBY. Why didn't you, Mr. Nussbaum, you said earlier that you try to make your phone calls, in other words, to call back people who call you. Someone as important in the United States as the Deputy Attorney General, you're the White House Counsel, the White House is in a crisis management stage obviously because of this, and you tell Mr. Heymann you're going to call him back but you don't remember to call him back? Or if you do remember, you don't call him back anyway, do you?

Mr. NUSSBAUM. If I had made a commitment to call him back, which I remembered, I would have called him back.

Senator SHELBY. Say that again, sir?

Mr. NUSSBAUM. I said if I had made a commitment to call him back, which I remembered, I would have called him back. Obviously, Mr. Heymann and I had a miscommunication at that point.

Senator SHELBY. Did you not call him back because you didn't want to face him because you knew what you were going to do to have a sham search, and you didn't want him intervening?

Mr. NUSSBAUM. Senator, last year at these hearings, you called me a strong man.

Senator SHELBY. Well, I think you are a strong man.

Mr. NUSSBAUM. Senator, as a strong man, I wasn't afraid to face anybody including Phil Heymann. And if I would have, I would have been more than happy to call him back to tell my position if I believed I had an obligation to call him back.

Senator SHELBY. Did you say something to the effect that I'm going to check with some people here at the White House and then I will get back to you, as Mr. Heymann testified under oath right here?

Mr. NUSSBAUM. If Mr. Heymann—yes.

Senator SHELBY. Did you say something about——

Mr. NUSSBAUM. I may well have said that to Mr. Heymann. I don't dispute Mr. Heymann's testimony.

Senator SHELBY. Were you really going to check with the President of the United States or Mrs. Clinton? Is that who you really meant you were going to check with regarding the search of the office? And you checked with them, and then you didn't call him back?

Mr. NUSSBAUM. No. The people I talked to——

The answer to your question specifically is I didn't check, and I didn't mean to check with the President of the United States or the First Lady. The people I did talk to that morning——

Senator SHELBY. Who were they?

Mr. NUSSBAUM. Mack McLarty, Jack Quinn, and Bill Burton.

Senator SHELBY. What did they tell you about the search? Do it your way, Bernie?

Mr. NUSSBAUM. No.

Senator SHELBY. They didn't tell you that?

Mr. NUSSBAUM. Do you know what they told me?

Senator SHELBY. Did you tell them you were going to do it your way?

Mr. NUSSBAUM. Yes, I told them. You know what they told me? They told me don't, in effect, the bottom line, Bernie, don't let anybody into the office. Do it the way you would do it in private practice with a big litigation. Make an inventory, make a log, don't let anybody into Vince's office.

Let me finish, Senator.

Senator SHELBY. I am.

Mr. NUSSBAUM. There's sensitive stuff there. There's confidential material, there's privileged material. We have an institutional interest. Don't let anybody into the office.

You know what I said, Senator? I said, I don't agree with that. I think we should let these law enforcement people into the office. We have to balance the conflicting interests involved here. I think I have a way to do it right, and I did say we're going to do it my way.

Senator SHELBY. You did it your way, and the American people will never know really what was in there. You didn't want people to know including, let me finish, including the Justice Department of the United States of America?

Mr. NUSSBAUM. Senator, every document in that office was preserved. No document was destroyed. Privilege was ultimately never claimed. Every document that law enforcement sought, some right after the search, and some 6 months later, when Whitewater emerged, was turned over, every single document, Senator.

Senator SHELBY. Who made that decision?

Mr. NUSSBAUM. The American people——

Senator SHELBY. Who made the decision——

Mr. NUSSBAUM. Senator, let me finish my answer. Please, Senator.

You're talking about the American people. The American people should know, should know that. No documents destroyed, they should know that. Every document preserved. This President has waived every privilege, every confidence with respect to this, and has turned over every document to law enforcement authorities when they asked for them. That's what the American people should know, and I think the American people will be satisfied with that.

Senator SHELBY. What about the missing index in the office? Do you know about that?

Mr. NUSSBAUM. I know of no missing index in the office.

Senator SHELBY. You heard testimony to that effect?

Mr. NUSSBAUM. I've heard a secretary testified that she remembers there was an index in the office which she didn't see. I know of no index in that office which I didn't see.

I know this, Senator. I know every document that was in that office was preserved. All the Clinton personal files were preserved, all the Foster personal files were preserved, all the Foster working files were preserved. That's what a good lawyer is supposed to do. He's supposed to preserve the files but he's supposed to be sure that his clients, if they wish, even his official clients, can protect confidentiality and exercise privilege although that was not done here.

Senator SHELBY. Mr. Nussbaum, but again, I know my time's run out, you were a Government worker, working as Counsel to the President of the United States, not as a personal lawyer.

Mr. NUSSBAUM. I was a Government lawyer.

Senator SHELBY. That's right.

Mr. NUSSBAUM. Working for the President in his official capacity.

Senator SHELBY. And not his personal capacity.

Mr. NUSSBAUM. As a Government lawyer—let me finish, Senator—as a Government lawyer, I am bound by the same ethical rules as a private lawyer. I had the same obligations as if I was in private practice.

Senator SHELBY. The same obligations? Wait a minute.

Mr. NUSSBAUM. The same obligations to maintain confidentiality and to preserve the right to claim privilege. Government lawyers are obligated, have the same obligations imposed upon them as private lawyers. We stand on a par with respect to those.

Senator SHELBY. Mr. Nussbaum, did you basically not trust the Justice Department?

Mr. NUSSBAUM. No, I trusted the Justice Department, Senator Shelby.

Senator SHELBY. And Mr. Heymann?

Mr. NUSSBAUM. I trusted the Justice Department, Senator.

Senator SHELBY. Well, why didn't you say, Mr. Heymann, come on down and we'll look over this together?

Mr. NUSSBAUM. Senator, did you trust the Justice Department?

Senator SHELBY. On stuff like that, I certainly would.

Mr. NUSSBAUM. Would you let them into your office, your counsel's office, to look at your personal documents?

Senator SHELBY. Absolutely, I have nothing to hide. They can come tomorrow or today.

Mr. NUSSBAUM. OK, Senator, good.

Senator SHELBY. Or they can go right now while I'm down here.

Mr. NUSSBAUM. Well, that's fine, Senator.

Senator SHELBY. Thank you.

The CHAIRMAN. Senator Moseley-Braun.

OPENING COMMENTS OF SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman.

Mr. Nussbaum, I want to change subjects a little bit and talk in a more general sense about some of the issues I think that have been raised in this hearing and in your statement.

In your statement, I was just looking for the line, and I can't find it right now, but in your opening statement, you made a comment that Vince Foster's suicide, his death, was a unique occurrence and certainly the fact is it's not something that anyone expects to happen. None of us expect to die and none of us expect to have someone close to us commit suicide, these things are always unexpected.

But at the same time, given the history of difficult circumstances with regard to White House involvement in those kinds of unexpected things, my question has to do with whether or not any thought had been given, either by White House Counsel or by Department of Justice, in development of some guidelines, some procedures for handling these kinds of situations.

I should tell you, I asked the question of Mr. Heymann whether or not the Justice Department had some guidelines in place for handling the unexpected circumstance of a death or some emergency affecting a high-level individual. He said that they did not.

I'm just wondering whether or not you had given any thought to it then, whether you've given any thought to it now, and would you have any recommendations for the development of procedures and guidelines for the White House in these kinds of circumstances?

Mr. NUSSBAUM. I think that's a very good question, Senator.

There were no guidelines in the White House, and it was a unique situation. I think one of the positive things that's going to come out of these hearings, just the fact that they were held and these issues were discussed and the way we have discussed them, I think there should be some consideration given to developing guidelines as to the relationship between the Department of Justice and the White House and how they will mesh basically in any law enforcement investigation involving or touching upon the White House in some fashion.

We have general ethical rules which apply to this situation, but nonetheless I think it would probably be a useful endeavor for somebody to sit down and figure out just how they believe things should be done and setting forth some guidelines.

Although I don't think, Senator, to be totally frank with you, I am totally frank with you in any event, but I just don't think you can override these rules that bind all lawyers as Code of Professional Responsibility. I don't think you should want to override that. I guess you can legally override it. I don't think it's constitutionally based, the attorney-client privilege or the work product privilege, but I don't think you want to do that because these are good rules.

These rules about attorney-client privilege and work product privilege are good rules. What they foster is people talking to their lawyers. They foster people communicating with their lawyers and that results in the long run in law abiding conduct.

If you have a rule which says that when you talk to your lawyer, whether you be White House Counsel, or counsel to a Senator, or just a private counsel, that these things in a law enforcement investigation will be automatically, you know, throw open the door, like Senator Shelby says, and just do that, people will stop talking, and there'll be less, I believe, law abiding conduct.

These are good rules. They're not rules made for the benefit of lawyers. They're made for the benefit of clients, for people who hire lawyers, and they're made for the benefit of our society because they'll result in greater obedience of law and greater justice.

So while I think it is useful—this is a long-winded answer to your question, and I apologize for using so much of your time—but while it would be a good idea because of these sensitive, political, legal, constitutional even issues that have arisen, while it's useful to try to construct guidelines, nonetheless in constructing such guidelines, we shouldn't throw out the baby with the bath water.

Senator MOSELEY-BRAUN. Actually, you mentioned general ethical rules, and that really is one of the issues that keeps getting raised, was raised with you last time when we had the hearings last year, and it's being raised now, and that really is the set of contradictions that arise when you have White House Counsel approaching representation of the President in his personal capacity. And it's been suggested that in his or her, I would say, because one

of these days we will have a woman in the White House as President, but anyway——

Mr. NUSSBAUM. I hope so, Senator.

Senator MOSELEY-BRAUN. It's been suggested that when you become President of the United States, you don't have a private life, you have no personal papers, that it is all public. The question I would put to you, because over and over again in your prepared statement and in your statements here today, the suggestion is made that these were personal papers. You keep referring to the attorney-client privilege which would be a personal obligation, an obligation to an attorney and his or her client, in a personal capacity. The question keeps being raised, and I think the question needs to be addressed, about whether or not White House Counsel can ever appropriately serve the President in a personal capacity?

Mr. NUSSBAUM. That's an interesting point, Senator. It's one we discussed last year, and we're discussing again this year. I didn't serve the President as White House Counsel in a personal capacity, nor did Vince Foster serve the President and the First Lady in their personal capacities. We were their lawyers in their official capacity, in their official capacity. That's what we were. They have private lawyers. They had Williams & Connolly and other people. We represented them in their official capacity and we were entitled to work on anything that affects them in that official capacity.

Now it is true, Senator, as you perceptively pointed out, that when you get to be President, virtually most things will start affecting you in your official capacity, but not everything. I didn't do the President's will, I didn't buy his house. If he had a matrimonial, which God forbid, he's not going to have, if he had a matrimonial, I wouldn't handle that.

The CHAIRMAN. That's going to be the newspaper headline.

Mr. NUSSBAUM. In any event, I'm trying to show you there are certain things that don't affect him in his official capacity. It may affect him as a person, as a human being, but that don't affect him in his official capacity.

What Vince and I were doing in the White House Counsel's Office were representing him in his official capacity, not his personal capacity. But there are some things, such as filing disclosure forms, creating a blind trust, filing your tax returns which become public. Those are official things for a President but you need your personal files to do that, your bank account, your insurance policy, what real estate you own, so in that area, you need personal files to help him fill an official function.

They still remain personal files. They have nothing to do with the transaction of Government business, so you use those files for this official function, and then when the function is over, as it was in July 1993, and unfortunately Vince was also dead in July 1993, you send them back. You send them back to the President and the First Lady, or to their private lawyers, and that's what we did.

That's the way I think a sensible lawyer should act. But at no time were we the President's personal lawyers, as Senator Shelby rightly pointed out. I was on the Government payroll, I was a Government lawyer, but my role was representing the President in his official capacity.

Senator MOSELEY-BRAUN. Except that, Mr. Nussbaum, I think one of the problems here is the contradiction. You were making decisions about papers and claiming the privilege which would attend to a personal connection between you and the President and the First Lady, even though you were making those decisions in your official capacity.

And so the contradiction and I think the place where we run into the problem is perhaps the answer would have been to have his private, personal counsel there to say, well that piece of paper is my piece of paper and the other piece of paper is your piece of paper, and I claim the privilege for this piece of paper.

Mr. NUSSBAUM. That's one possible solution, Senator.

Senator MOSELEY-BRAUN. I'm not trying to make this overly bureaucratic, but I——

Mr. NUSSBAUM. No, no, I understand, and I may not be clear, Senator myself. I may be muddling certain things when I talk to you, but the President, in his official capacity, has an attorney-client privilege, in his official capacity, also has a work product privilege, and certainly has executive privilege in his official capacity.

Now his private papers, I wasn't exercising privilege with respect to those private papers. All I was doing was assuring that they go to him and his private lawyers so they can determine whether or not privilege was being exercised. I was acting as a lawyer should act after a colleague dies in the possession of a client's personal papers.

When a client dies, and the rules talk about this, ethical consideration 4.6 of the New York State Code of Professional Responsibility talks about this. It says, after a client dies, excuse me, after a lawyer dies, it's the obligation of other lawyers to see to it that a client's confidence is still protected and his personal papers should basically be sent to the client or to a new lawyer. All I was doing was acting in accordance with the rules that apply to all lawyers, whether they're personal lawyers or Government lawyers.

Now I know, Senator, as you've been saying, that sometimes these lines are hard to draw, especially when you're dealing with the President of the United States. But what good lawyers do all the time is try to draw those lines and try to do them the right way. That's what I tried to do in July 1993. And, as I said, I know some of you may disagree, you disagreed with me last year, I said, looking back, I think I did the right thing. I have no regrets.

Senator MOSELEY-BRAUN. Well, I would just in closing say that there's an old expression that we're called on sometimes to be the CDLS, and that's the Committee to Draw the Line Somewhere, and it seems to me that the lines in these kinds of situations would be better drawn prospectively, proactively, so that we don't wind up with another set of multimillion dollar hearings over whether or not someone properly handled personal versus official versus extraneous material in any of the high offices in Government, because there's so many important issues going the public trust and the like that are involved here. We ought to have the sense to, I think, act before these problems crop up again.

Mr. NUSSBAUM. I agree with that observation, Senator.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Nussbaum, I want to move away from the philosophy and back to the facts.

We had your testimony a little earlier in which you confirmed for us the fact that it was Ms. Thomases who raised with you, on the 22nd of July, that she understood people had a disagreement or a concern about the manner in which the document review would proceed, and I think once you confirmed that for us, it was very useful then to go back to the record and learn that the three people Ms. Thomases had talked to of consequence in the White House before you were the President, the First Lady, and Maggie Williams.

So you can draw an inference from that.

Mr. NUSSBAUM. I don't draw an inference from that. You can draw an inference if you wish. I don't draw an inference from that.

Mr. CHERTOFF. Let's go to another conversation. You have testified here that in the afternoon of the 22nd, after the law enforcement people left Mr. Foster's office, you had Maggie Williams come in to help you conduct a search of the files for personal documents, correct?

Mr. NUSSBAUM. No, that's not correct.

Mr. CHERTOFF. You didn't ask her to come in?

Mr. NUSSBAUM. I asked her to come in, but not to conduct a search of a file.

Mr. CHERTOFF. To conduct a selection.

Mr. NUSSBAUM. No.

Mr. CHERTOFF. To conduct a review.

Mr. NUSSBAUM. I asked her, let me, let's tell it—could I just respond. I'll tell you what I did. You want to know what I did, I'll tell you what I did.

Mr. CHERTOFF. Well, Mr. Nussbaum, you've given a lengthy statement. On the other hand, as you know, you're more experienced in court than I am. There comes a point that you're asked to answer specific questions.

Mr. NUSSBAUM. I'm not sure that last thing is true, Mr. Chertoff.

Mr. CHERTOFF. I just want to make sure that we start at the same point. You asked Ms. Williams to come in, right?

Mr. NUSSBAUM. I asked Ms. Williams to come in, right.

Mr. CHERTOFF. She sat with you?

Mr. NUSSBAUM. I don't know if she sat down at all, no. I think she stood.

Mr. CHERTOFF. You reviewed certain personal documents?

Mr. NUSSBAUM. We did not review certain personal documents.

Mr. CHERTOFF. Did you select certain personal documents?

Mr. NUSSBAUM. I pointed out to her a series of files which I believed were Clinton personal files. And I said to her, as I said, I would like her to take these, check with the Clinton's. I think they should be sent to the private attorney.

I also asked her to look, to look, and I think all she did was look at certain labels of files, to look to see if there was anything that I missed in this area which was a personal file, and I recall her looking. She didn't pull out files and read files, but looking, glancing basically at various labels of various files to see if there were any additional personal files. I don't believe she found any; I'm not sure.

Mr. CHERTOFF. Did she pick up a file marked "taxes"?

Mr. NUSSBAUM. I don't recall any particular file that she picked up. I recall her looking to see if there were any additional personal files. I don't remember if she spotted any additional personal files. In any case, this was fairly brief. I don't remember how long it was, but she was there a little while, and then we collected the files that I had pointed out, and they were put in a box, and ultimately taken to the residence.

Mr. CHERTOFF. We've had testimony from Deborah Gorham that she came in and you and Ms. Williams were present and you had the drawer open, and you were asking Ms. Gorham to help guide you through the files. Do you disagree with that testimony?

Mr. NUSSBAUM. No, I—well, it is quite possible—I'll just give you my best memory, which is all I can give you, it's quite possible that in seeking to make sure that we had identified all the personal files, we did call Ms. Gorham in and ask if she had any additional knowledge that she could convey to us.

Mr. CHERTOFF. Now this part's important. You asked Maggie Williams to check with the President or the First Lady to determine where those files should go, correct?

Mr. NUSSBAUM. That's correct.

Mr. CHERTOFF. Did you know that she then called the First Lady?

Mr. NUSSBAUM. I assumed she was going to do it. Did I know it? No, but I assumed she was going to do it.

Mr. CHERTOFF. After that telephone call, those documents went up to the residence. You know that to be true, correct?

Mr. NUSSBAUM. Well, I know that, but my belief is they went to the residence because it was late in the evening. Let me tell you my belief. Mr. Chertoff, please—

Mr. CHERTOFF. I'm just trying to get—

The CHAIRMAN. Now wait a second, now wait.

Mr. NUSSBAUM. Let me just tell you, I'll give you the answer.

Mr. CHERTOFF. I didn't ask for your belief. I asked you a sequence of events.

Mr. NUSSBAUM. Mr. Chertoff, you may not want my belief, but I would like to give you my belief. My belief is that the files went to the residence because it was late in the evening or because it was late in the day, and we were leaving for the funeral the next day, and she had to have time to check with the President and the First Lady.

Mr. CHERTOFF. Is this your belief from watching television and hearing the testimony, or from a conversation you had with her?

Mr. NUSSBAUM. This is my belief from my recollection of events at the time.

Mr. CHERTOFF. She told you she was too tired and she was sending them to the residence at the time?

Mr. NUSSBAUM. This is—I don't remember a conversation. I remember, I remember these events.

Mr. CHERTOFF. I'm asking you not the things you don't remember but what you do remember. You remember asking her to check, right?

Mr. NUSSBAUM. Yes, I do.

Mr. CHERTOFF. You don't know, you were not present when she made a call to the First Lady, right?

Mr. NUSSBAUM. No, I was not.

Mr. CHERTOFF. She didn't tell you about the call afterwards, right?

Mr. NUSSBAUM. She may have, she may not have. I don't remember.

Mr. CHERTOFF. You have no memory?

Mr. NUSSBAUM. No memory of that.

Mr. CHERTOFF. You don't know what the content of the call was, right?

Mr. NUSSBAUM. I do not now know what the content of the call was.

Mr. CHERTOFF. And you have no reason to disagree with the fact that the documents later that day made their way up to the residence, correct?

Mr. NUSSBAUM. Oh, no, I have no reason.

Mr. CHERTOFF. So those facts are established?

Mr. NUSSBAUM. They certainly are, Mr. Chertoff.

Mr. CHERTOFF. You don't know what the conversation was between Maggie Williams and the First Lady in that call, right?

Mr. NUSSBAUM. I do not, sir.

Mr. CHERTOFF. Was there any particular reason that night, if people were tired and it was late, that you couldn't have simply left the documents in Mr. Foster's office, turned the key, and come back on Monday to finish up?

Mr. NUSSBAUM. You want to know why I didn't?

Mr. CHERTOFF. I'm asking you was there a reason, and what was the reason?

Mr. NUSSBAUM. The reason, thank you, Mr. Chertoff, I'll give you the reason. The reason was the search was over. I had just transferred the Foster personal files to the Foster personal lawyers. I was anxious to get on with the work of my office. I had told the Department of Justice, and Mr. Adams has testified to this effect, that I was going to move the working files to other lawyers who would work on them.

It seemed the most natural thing in the world for me, at that point, having just transferred the Foster personal files, to now transfer the Clinton personal files. Maggie's 10 feet away from me, she's in my mind, a representative of the First Family. It was very natural for me to call for Maggie, to ask her to take these files.

I am, Mr. Chertoff, as you can tell and see, and we know each other a little bit, fairly action-oriented. I want to do something, I want it done. I wanted to get on with the work of my office. I didn't want to come back on Monday, July 26, to have to deal with these issues.

Mr. CHERTOFF. You asked——

Mr. NUSSBAUM. I'm not finished, Mr. Chertoff.

I wanted to do what I had to do. I wanted to complete what I had to complete. Part of that was getting the Clinton personal files to Maggie to the Clinton's and to the new personal lawyers. It was the most natural thing in the world for me to do that on the night of July 22.

Mr. CHERTOFF. Did you ask Ms. Gorham, or anybody else, to prepare a log or record of the documents that were being removed from the office on the 22nd, yes or no?

Mr. NUSSBAUM. There was no need to do that, and I did not do that.

Mr. CHERTOFF. On the 26th, when Mr. Neuwirth did his review, he did prepare a log, right?

Mr. NUSSBAUM. He was preparing an inventory to assist me in determining who should receive certain documents.

Mr. CHERTOFF. Now,——

Mr. NUSSBAUM. You're cutting me off, Mr. Chertoff. I know you don't mean to do it, but you're doing it.

Mr. CHERTOFF. We're wandering a little, Mr. Nussbaum.

Mr. NUSSBAUM. No, we're not wandering. I'm trying to answer, I'm trying to be helpful to you.

The reason I had Steve Neuwirth prepare a list, an inventory, was that I wanted to sit down with him and to talk with him about who should get what. We had to sort of now split up Vince's work because of this unfortunate tragedy. That is why I had Mr. Neuwirth do an inventory then. It wasn't necessary to log out the Clinton personal files or to inventory them, or the Foster personal files, because they were going to personal lawyers. You know what those personal lawyers did? They made inventories of everything they received.

Mr. CHERTOFF. And this you know from the hearings, right?

Mr. NUSSBAUM. I know this from before the hearings.

Mr. CHERTOFF. Now I want to be quite clear with this. Is it your testimony that you and Ms. Williams did not work together to select and make sure you took out the Clinton personal files?

Mr. NUSSBAUM. No, that is my testimony.

Mr. CHERTOFF. You did. So the two of you, in fact, worked together?

Mr. NUSSBAUM. Yes, we worked together.

Mr. CHERTOFF. You looked in the credenza together?

Mr. NUSSBAUM. Yes, we looked in the credenza together.

Mr. CHERTOFF. So it was a joint effort to look for the documents, correct?

Mr. NUSSBAUM. Yes, we jointly functioned together on that.

Mr. CHERTOFF. You jointly identified together files which appeared to be, and which were Clinton personal files, yes?

Mr. NUSSBAUM. I identified them in the first instance, but some, but she looked and she jointly participated in this process.

Mr. CHERTOFF. Well, let's make it clear because we're at page 238 of your deposition, line 3:

Question: And where did you look?

Answer: Primarily in the credenza. I don't think we looked very many other places if we looked in other place at all. We looked in the credenza primarily. We identified together files which appeared to be and which were Clinton personal files, investments, taxes and the like, and they were put into a box. I don't remember who put them into the box and they were taken out of the office.

Do you recall giving that answer to that question?

Mr. NUSSBAUM. I do, sir.

Mr. CHERTOFF. Let me turn to something else briefly before my time runs.

I want to get you to 9:00 p.m. on the night of the 22nd. We have had testimony from Mr. Heymann that it is vivid in his mind, he recalls standing in the kitchen of his little apartment here in

Washington on the telephone to you, telling you, asking you what are you hiding, complaining to you about the fact that you went ahead with the search in the presence of the Department of Justice people without getting back to him and bitterly angry about it. I want to ask you, Mr. Nussbaum, did that conversation occur, or not?

Mr. NUSSBAUM. A conversation undoubtedly occurred between Mr. Heymann and I on the night of the 22nd because Mr. Heymann says it occurred, and I have no reason to deny it occurred. But,——

Mr. CHERTOFF. Yes?

Mr. NUSSBAUM. But Mr. Heymann was not bitterly angry at me on the night of the 22nd. He may have expressed some displeasure with respect to getting back to him. This is sort of coming from the hearings, rather than my independent memory, but I do remember no bitter disappointment, no vicious conversation, no statements about misuse of the Justice Department. I remember those things did not happen.

Mr. CHERTOFF. Did he ask you, are you hiding anything?

Mr. NUSSBAUM. That I don't remember. I don't remember one way or another asking. If he did ask it, I would have answered exactly the way he said I answered, I am not hiding anything. But I don't remember him asking that.

Mr. CHERTOFF. That's not the kind of thing that would stick in your memory? The Deputy Attorney General of the United States, someone who you worked through Watergate with together, says to you, as White House Counsel, are you hiding anything. Memorable or not memorable?

Mr. NUSSBAUM. You know, it's not the kind of thing Phil would say.

Mr. CHERTOFF. You don't think he said it?

Mr. NUSSBAUM. I don't think, my best memory is that he didn't say it, but if he says he said it, he said it.

Mr. CHERTOFF. He was under oath here, right?

Mr. NUSSBAUM. I'm sure he's giving his best memory.

Mr. CHERTOFF. I would like to put up the note. In his own handwriting, he has a note, I'm going to put it up here, of this conversation. I understand the note was written months later.

Mr. NUSSBAUM. That's right, it was.

Mr. CHERTOFF. But do you have any reason to believe that he was lying to his notes?

Mr. NUSSBAUM. No, of course not. I think he was putting down his best memory.

Mr. CHERTOFF. This was his own conversation, not second hand, not third hand, his own recollection.

Mr. NUSSBAUM. Yes.

Mr. CHERTOFF. Nine o'clock PH to BN, "you misused us."

Mr. NUSSBAUM. But he testified, didn't he, he didn't think he used the words with me, "you misused us." Did he say that here?

Mr. CHERTOFF. Let's not confuse your testimony here with your recollection, which is all we're interested in, with your having followed the hearings. I don't want to pollute your memory with your trying to kind of match it up.

Mr. NUSSBAUM. I appreciate that.

Mr. CHERTOFF. It's for the finders of fact to match up. It's for you to give your testimony. So the question is this. Looking at this note, PH to BN, quote "you misused us," close quote, written in Phil Heymann's own handwriting. Did he say this to you, either exactly or in substance?

Mr. NUSSBAUM. No.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. We have a vote.

Senator SARBANES. Mr. Chairman, before we break, I want to correct the record in one respect. Mr. Chertoff said that Mr. Nussbaum and Mr. Heymann worked together through Watergate. I was around at that time, and I think we ought to get it clear on the record, because there was an earlier suggestion that Mr. Nussbaum had worked with Mr. Ben-Veniste.

Mr. Heymann and Mr. Ben-Veniste both worked for the Special Prosecutor for Archibald Cox and then it was Leon Jaworski. Mr. Nussbaum worked for the House Judiciary Committee in the course of the impeachment. So in a sense, they all worked on Watergate, but I don't think it's accurate to say they worked together.

Mr. Nussbaum worked in a significant position on the staff of the House Judiciary Committee, which was headed up by John Doar and Al Jenner, and Mr. Ben-Veniste and Mr. Heymann worked in the Office of the Special Prosecutor.

The CHAIRMAN. That's correct.

Mr. CHERTOFF. For the record, I was in college, Mr. Chairman, and I watched it all on television.

[Laughter.]

The CHAIRMAN. Let the record note all of those facts. We are concluding a vote. We will return. We will stand in recess for the next hour. We will return at 2:30 p.m.

[Whereupon, at 1:30 p.m., Wednesday, August 9, 1995, the hearing was recessed, to reconvene the same day at 2:30 p.m., in the same place.]

AFTERNOON SESSION

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator Sarbanes.

Good afternoon, Mr. Nussbaum.

Mr. NUSSBAUM. Good afternoon.

Mr. BEN-VENISTE. One of the things that Mr. Heymann and Mr. Adams testified to that concerned them was that following the search of the office on July 22, the next day a Washington Post story that appeared stated that the Department of Justice had supervised the search in Mr. Foster's office.

Now, let me ask you first whether you or anyone at the White House to the best of your knowledge put out a statement that said that the Department of Justice had supervised the search?

Mr. NUSSBAUM. I did not, nor to my knowledge, did anyone else at the White House.

Mr. BEN-VENISTE. Indeed, we have reviewed the briefing and the statement released by Dee Dee Myers on the evening of the 22nd, and that statement did not reflect that the Department of Justice had supervised the search. But I am curious to know whether you had heard from any other source as to whether this was simply a jump that the reporter had made or whether there was anyone at the White House who had actually suggested that the Department had supervised the search?

Mr. NUSSBAUM. To my knowledge, no one at the White House suggested that the Department had supervised the search.

Mr. BEN-VENISTE. So this could be another circumstance where, from the Department of Justice's standpoint or the individuals involved—Mr. Heymann, Mr. Adams, and Mr. Margolis—they could have been justifiably concerned that someone may have tried to spin or manipulate what had actually occurred, but in fact this was nothing attributable to you or people at the White House?

Mr. NUSSBAUM. That's correct.

Mr. BEN-VENISTE. Before our luncheon break, there was a suggestion that in connection with the actual procedure that was employed during the afternoon of July 22, that no one had testified that the law enforcement or Department of Justice personnel involved had had any input into what should be segregated for later review and consideration by law enforcement. Do you recall that?

Mr. NUSSBAUM. Yes, sir.

Mr. BEN-VENISTE. Over the break, we have, Mr. Chairman, reviewed the testimony that we have received so far either by testimony here in the hearings or testimony in prehearing depositions. May I say that Mr. Adams, Mr. Spafford, Mr. Neuwirth, Mr. Sloan, Mr. Burton, Agent Salters, Captain Hume, Sergeant Markland, and Special Agent Flynn of the Secret Service have all testified that, indeed, during the search they made various requests to review materials and that those materials were put aside in a segregated pile for later review.

If the Chairman so wishes, we can make reference to the specific pages at which that testimony was given. So, hopefully, that does clarify the matter.

Mr. NUSSBAUM. That is consistent with my memory as well.

Mr. BEN-VENISTE. Let me go to the 22nd. Direct your attention thereto. May I ask that the diagram that was marked as Exhibit 1 of August 7 be placed on the Elmo machine? Mr. Nussbaum, can you see that?

Mr. NUSSBAUM. I can.

Mr. BEN-VENISTE. This is a somewhat more-to-scale rendition of Mr. Foster's office than we had been operating with previously. Does that layout comport with your recollection of Mr. Foster's office on the 20th of July 1993?

Mr. NUSSBAUM. It does.

Mr. BEN-VENISTE. Do you see where the two X's are?

Mr. NUSSBAUM. Yes.

Mr. BEN-VENISTE. Those have been identified as the places where Messrs. Margolis and Adams sat during the search. Does that comport with your recollection, if you have one?

Mr. NUSSBAUM. I have this memory of Adams. According to this, Adams and Margolis were on the right side. I was behind the desk. So they were to the right. I have this image of Margolis at least being toward the left, more toward the left. I don't think he and Adams were necessarily sitting together. They may have been. But, in any event——

Mr. BEN-VENISTE. More or less in the same area in front of the desk?

Mr. NUSSBAUM. Clearly, in front of the desk. Clearly, right in front of the desk, just as those two X's show.

Mr. BEN-VENISTE. You were sitting behind the desk, where the number 72 is?

Mr. NUSSBAUM. That's correct.

Mr. BEN-VENISTE. The briefcase, tell us your recollection, Mr. Nussbaum, of what occurred when you searched the briefcase on the afternoon of the 22nd?

Mr. NUSSBAUM. I recall, after we were looking at the files in Vince's office, looking at the files on his desk, looking in the drawers. I recall at some point turning, just as I was sitting here, turning around and seeing the briefcase, which was against the wall, on your diagram where the X is, the other X, reaching back. I may have been standing or sitting, I am not positive. Or half-sitting, reaching back, pulling the briefcase over to my side, which was right to my right side, putting it down in front of me. I don't remember picking it up or anything like that, but putting it right down, reaching in, glancing at it, seeing there were files, and taking out the files as I am doing now, just removing files till I removed all the files. It may have been one motion or two motions, I don't remember. I removed all the files until it was clear that I emptied the briefcase of the files, and then describing the files in a general way to the assembled group, and then at some point moving the briefcase back to the wall. That's what I remember.

Mr. BEN-VENISTE. At any time do you recall putting the briefcase on the desk?

Mr. NUSSBAUM. I do not recall putting the briefcase on the desk.

Mr. BEN-VENISTE. Do you recall at any time opening the briefcase once the files were removed and looking into it?

Mr. NUSSBAUM. No, I do not recall. I did not do that.

Mr. BEN-VENISTE. Having in mind that this is the drawing that places Mr. Margolis and Mr. Adams where Mr. Adams recalled and others have recalled having, including Mr. Neuwirth and Sloan, where they recall Adams and Margolis sitting. Could we put up Markland Exhibit 1, please?

According to Detective Markland's recollection, Mr. Margolis sat in the place where it says "DM," and Mr. Adams sat to his left where the initials "RA" are indicated. Do you recall whether that is an accurate description of where they sat or whether Exhibit 1 of August 7 is accurate?

Mr. NUSSBAUM. Exhibit 1 of August 7 is much more accurate. That is clearly inaccurate. Margolis and Adams were not back over to that side of the room where this exhibit puts them. They were clearly in front of the desk, maybe a little more to the center than the two X's that you showed me before, but in the location of the two X's that you showed me before.

Mr. BEN-VENISTE. Thank you, Mr. Nussbaum.

According to your recollection and according to the contemporaneous notes taken by Mr. Spafford—

The CHAIRMAN. I will let you finish the line. Go ahead.

Mr. BEN-VENISTE. During the course of the search, you referred to documents relating to the First Family. Do you recall having done that?

Mr. NUSSBAUM. Oh, yes.

Mr. BEN-VENISTE. With respect to the trust and other items?

Mr. NUSSBAUM. Yes.

Mr. BEN-VENISTE. That you referred to the Travel Office management file?

Mr. NUSSBAUM. Yes.

Mr. BEN-VENISTE. That you referred to—and I will get the exact language—the financial and other documents relating to Clinton personal files?

Mr. NUSSBAUM. Yes, I did do that.

Mr. BEN-VENISTE. Did anyone at any time request any of that material to be segregated, put aside, or otherwise reviewed?

Mr. NUSSBAUM. No one made such a request.

Mr. BEN-VENISTE. Thank you.

The CHAIRMAN. Senator Bond.

OPENING COMMENTS OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you very much, Mr. Chairman.

Welcome, Mr. Nussbaum.

Mr. NUSSBAUM. It's good to see you again, Senator.

Senator BOND. It's good to see you, sir.

Mr. Nussbaum, in your very strong statement this morning you state that, "It is unfair to make any linkage between Whitewater and the actions in July 1993," and you claim of all the abilities you have, "The ability to foresee the future is not one of them."

I question, though, whether, in fact, on July 20, 21, and 22, you did not already know that Whitewater was a problem.

We received evidence in the hearing last year from your files that you received two faxes, one in the evening of March 23 and one in the morning of March 24, from Roger Altman, outlining or including the New York Times articles of March 9. One headline read,

"Clinton Defends Real Estate Deal." Another one said, "Lawyers Agree to Pay Big Fine in S&L Case."

We know from testimony last year on the evening of the 23rd Mr. Roelle had told Roger Altman that there was a criminal referral in this case. It is on that basis that I believe any reasonable person could assume that a fax was sent of a New York Times copy of the newspaper article involving that matter to your office. Are you telling us that you did not, in March 1993, know that there were some questions being raised in the media about the Clintons' relationship to Whitewater?

Mr. NUSSBAUM. As you will recall, Senator, from the hearings last year, I testified that I had no memory of receiving that fax in March 1993, and the first it came to my attention that I received a fax from Roger Altman in March 1993 was after my discussion with Jean Hansen at the end of September 29, 1993.

I said that last year. I know you remember the testimony from last year. So, in July 1993, I had no knowledge and no memory of receiving a fax from Roger Altman, and Whitewater, as I said in my statement, was not on my mind nor, do I believe, on anyone else's mind in the White House in July 1993. That is my answer to your question, Senator.

Senator BOND. You did not know of any criminal referrals?

Mr. NUSSBAUM. In July 1993? That is correct. I did not know of any criminal referrals.

Senator BOND. I think at the time I may have stated that as an able and aggressive White House Counsel, you are the kind of person that I would be very surprised if you did not have that information.

Mr. NUSSBAUM. Senator, I didn't have the information. That's a fact, Senator. As able and aggressive as I may be, I didn't have the information with respect to those criminal referrals.

Senator BOND. That's your testimony?

Mr. NUSSBAUM. It's more than my testimony, Senator, it's the truth.

Senator BOND. Now, Mr. Nussbaum, you practiced law in New York City, I believe, as everybody has indicated?

Mr. NUSSBAUM. Yes, that's fairly well known.

Senator BOND. You have been engaged in litigation?

Mr. NUSSBAUM. Oh, yes, sir.

Senator BOND. You are familiar with the Rules of Federal Procedure?

Mr. NUSSBAUM. Yes, sir.

Senator BOND. When you were asked about what to do with the documents that were in Mr. Foster's office, were you aware of Rule 26(b)(5) of the Federal Rules of Civil Procedure that outlines what you are supposed to do with privileged documents?

You are supposed to make the claim expressly, describe the nature of documents, communications, or things produced or disclosed in a manner that without revealing information itself, privileged or protected, will enable other parties to assess the applicability of the privilege or protection. You are familiar with that, aren't you?

Mr. NUSSBAUM. Senator, you may or may not be aware, but the Federal Rules of Civil Procedure do not apply to investigations of the type that was being conducted on July 22. They apply, they set

forth a procedure in the event any civil litigation where one party is suing another party in a civil litigation——

Senator BOND. I am well aware of that. But you have a standard that every lawyer knows how to handle privileged material.

Mr. NUSSBAUM. That is a standard that applies in a civil litigation. It is not a standard that necessarily applies when a law enforcement agency comes and wishes to see documents in an office. But I agree with you, Senator, the standard set forth in those rules are standards that lawyers should think about with respect to the production of documents.

Senator BOND. Your people told you that you ought to make a log. That's what you testified today.

Mr. NUSSBAUM. That's right.

Senator BOND. Before you let any of those documents go out. Where is that log?

Mr. NUSSBAUM. That is right. But if I would have done that, Senator, if I would have followed that procedure, my people were also telling me when they said that, they said, "Don't let anybody into the office. Don't let law enforcement people into the office. You should go into the office. Your staff should go into the office. You should take as much time as you need to prepare an index of all the documents in the office," and to prepare the kind of log that you're talking about. "Then we can respond to law enforcement." If I had done that, Senator, I would have had a hornet's nest on my hands. I would have had—let me finish, Senator, please—I would have had very disappointed law enforcement agents, I would have had a very disappointed Department of Justice, I would have created a great deal of suspicion, much more suspicion than exists today. And I know a great deal of suspicion exists today.

So, I acted in a moderate, balanced manner, which was to take them in with me and conduct the search in their presence. That was the right way to do it in the circumstances that I was facing; not following the Rules of Civil Procedure.

Senator BOND. You did not make a log before you sent materials out of that office?

Mr. NUSSBAUM. No, because it was not necessary. And no one asked me.

Senator BOND. You knew at that time and you told us this morning, that not only were officials looking for materials that might be a suicide note but also they were looking for things that might reflect evidence of extortion or something that might have caused severe mental anguish.

Mr. NUSSBAUM. That's correct, Senator.

Senator BOND. You said that you knew that. Now, you released to Maggie Williams a bunch of personal files to take to the residence?

Mr. NUSSBAUM. That's correct, Senator.

Senator BOND. You did not make a log of those?

Mr. NUSSBAUM. No, Senator. It was not required to. Nobody asked me to. The Justice Department——

Senator BOND. The Justice Department didn't care if you just walked out with all the documents?

Mr. NUSSBAUM. Senator, I don't know whether you heard Mr. Adams when he testified here, but he testified that he understood

that the Clintons' personal files were going to the Clintons' personal attorney. He understood that the Foster personal files were going to the Foster family lawyers. Indeed, I handed those files to the Foster family lawyers right in front of the Justice Department. No one asked me to make a log. No one asked me to make an index. They were right there, Senator. They knew what was happening. I was acting in the right way, Senator.

Senator BOND. You have heard the testimony that files left the office, the testimony of the officer on duty?

Mr. NUSSBAUM. Officer O'Neal? Yes.

Senator BOND. Officer O'Neal, on the night of the 20th, those 7-to-12-inch files went out. You have heard that testimony?

Mr. NUSSBAUM. You heard the testimony of Maggie Williams, Senator, that no files were taken out. You heard the testimony that two lie detector tests were taken by Maggie Williams.

Let me say something to you, Senator, I know Maggie Williams. I worked with her for a year and a half while I was in the White House. She is a splendid person. She is an honest person. She is a dedicated person.

Senator BOND. Mr. Nussbaum, we will make those judgments. I appreciate your testimony.

Mr. NUSSBAUM. Senator, all I am trying to do is to give you sufficient facts to make those judgments.

Senator BOND. We don't need your character witness.

The CHAIRMAN. Please, if I might lay out some rules, I am going to. I think in the interest of being responsive, Mr. Nussbaum, I would ask you not to continue in the future to characterize various people and witnesses.

Mr. NUSSBAUM. I understand.

Senator SIMON. Mr. Chairman.

The CHAIRMAN. Senator, please let me finish, and then you can make your statement.

I would ask you, please, not to characterize witnesses. Give your testimony on what took place and be responsive to the question. So far, we have allowed you to characterize everybody. So it is in the record what you think about Ms. Williams, what you think about Mr. Heymann, what you think about the others that you have dealt with. I think that has been adequately covered.

Yes, Senator Simon.

Senator SIMON. Mr. Chairman, it does seem to me it is perfectly legitimate that he take an extra 10 seconds to characterize someone when there is, by implication, wrongdoing, and that is part of his answer.

The CHAIRMAN. Senator Simon, if that were the case, I would agree. But you have not been here for most of the hearing.

Senator SIMON. I have been here for most of the hearing.

The CHAIRMAN. Then I refer you to the fact that I have permitted much characterization because I want people to give their impressions. Mr. Nussbaum has. But again, the repeated assertions uses up the time of the questioner. We will be here Friday, if that is the case. You can characterize all the witnesses as you please, but then we will be in session Friday. I would like to avoid that.

Now, I think we should put back at least 1 minute for the Senator and let him proceed.

Senator BOND. I would ask if we could put up on the Elmo the files from the printout—I believe it's 1107 or 1114—of the index that Ms. Gorham created.

You have heard about these indices, I believe, Mr. Nussbaum. One index was in the format which Ms. Gorham said she compiled. Another one was in also a package of redacted material. Both of them bore the date of July 22, 1993. It was clear from Ms. Gorham's testimony that one of them had been changed. Maybe we are going to see it, and maybe we are not. But let me ask you about the index.

Mr. NUSSBAUM. Yes, Senator?

Senator BOND. Did you see that index on July 20, 21, or 22? Do you recall seeing that?

Mr. NUSSBAUM. I have no memory now of seeing that index.

Senator BOND. Did you see the changed index, the one which was the one Ms. Gorham said was changed?

Mr. NUSSBAUM. I have no memory of seeing any changed index.

Senator BOND. Do you know of anyone who changed the index?

Mr. NUSSBAUM. No, I do not, Senator.

Senator BOND. This is the changed index that has been put up.

Mr. NUSSBAUM. I see, Senator.

Senator BOND. Do you know who would have had access to the computer to print it out on July 22 either in the original form or the altered form?

Mr. NUSSBAUM. I do not.

Senator BOND. Ms. Gorham would be. Wouldn't she be one?

Mr. NUSSBAUM. She would have, Senator. Yes, she would have had access.

Senator BOND. Who else in that office would have?

Mr. NUSSBAUM. We had other secretaries in the office. Linda Tripp was in the office. Betsy Palmer was in the office. Those were the three people, three of the people that worked in the outer office.

Senator BOND. You did not know? Did you know of that index?

Mr. NUSSBAUM. At this time I just have no memory of that index. It looks kind of familiar, but I don't remember.

Senator BOND. You did not see a hard copy of that in Mr. Foster's files anywhere?

Mr. NUSSBAUM. I don't remember now seeing a hard copy of that in Mr. Foster's files.

Senator BOND. And you have no knowledge of anyone who might have altered that index or removed that index from the files?

Mr. NUSSBAUM. I have no knowledge of anyone who might have removed that index from the files or who might have altered that index.

Senator BOND. Thank you, Mr. Nussbaum.

Mr. NUSSBAUM. Thank you, Senator.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Well, Mr. Chairman, I am going to yield to Senator Simon, but I do feel prompted to make this observation.

We didn't have any testimony from Ms. Gorham that this had been altered. She was shown two different indices, and she said with respect to one of them that that was consistent with the way she did her work, the other was not consistent with the way she did her work. But she did not testify as to the alteration of an

index. Now, it has been characterized that way here in the questioning that was just put, but I think it is important to make that point as far as the record is concerned.

Senator BOND. Mr. Chairman, we are still trying to get the hard disk copies to find out where they came from. At this point, the only logical explanation we have is that somebody took the original file and put it in a different format. Until we can find out from the hard drives if there is another explanation based on Ms. Gorham's testimony, that is the only logical explanation we have.

Senator SARBANES. Well, I am not sure I agree with that. But we are trying to find out, and I have co-signed a letter with the Chairman just this morning, just a few hours ago, to continue this inquiry. We are trying to get to the bottom of it, but I don't think it ought to be characterized the way it has been characterized here.

Senator Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Thank you, Senator Sarbanes.

First of all, Mr. Nussbaum, I have to say I was impressed by your statement. My guess is it will stand the judgment of history pretty well.

Mr. NUSSBAUM. Thank you, Senator.

Senator SIMON. Let me just read a couple of things here that I think we all ought to bear in mind.

Fear of appearing to do wrong prevents too many people from doing what is right. This is a prescription for weakness and paralysis. Then you say, and these are words that Senators ought to heed, Presidents, everyone, "Most important, worry less about tomorrow's headlines than about the judgment of history."

You also make a judgment call on what is going on here, and we are in the next-to-the-last day of the hearings here, and my instinct is at this point that your judgment call is the right one. You say, "What prompted these hearings is something different. It is the linkage, the unfair linkage, of two separate, disparate events. The first event involves my transfer in July 1993 of personal files, including a Whitewater file, to the Clintons' personal attorney following Vince's death, a transfer which was totally proper and indeed known to Justice Department officials. The second separate event involves the emergence in the fall of 1993 of Whitewater investigations and the resulting media frenzy. Linking these two events is illogical, unwarranted, and unfair. They are totally unrelated."

My guess is, when we get to the end of all the hearings, if there is wrongdoing in terms of Whitewater, and there is no question some serious mistakes were made, if there is wrongdoing, they will be totally unrelated to the handling of the documents during this period about which we have had 3 weeks of hearings.

Now, if I may be a little more specific on a generic question you were asked, you were asked about documents requested by groups. Did the Justice Department request any documents that you did not give them?

Mr. NUSSBAUM. They did not.

Senator SIMON. Did the FBI request any documents that you did not give them?

Mr. NUSSBAUM. They did not. Every document that law enforcement requested was given to them.

Senator SIMON. Let me just continue. Did the Park Police ask for any documents that you did not give to them?

Mr. NUSSBAUM. They did not.

Senator SIMON. Did the Secret Service ask for any documents you did not give to them?

Mr. NUSSBAUM. They did not.

Senator SIMON. Then we have the question of Susan Thomases and her conversation with you. I have to say, if all the things I have read over, that telephone log does raise a few eyebrows, seeing that series of phone calls and Ms. Thomases' inability to remember it. But I think that is perfectly possible.

Ordinarily, if Hillary Clinton wanted to communicate something to you, would she have talked to Susan Thomases and asked her to communicate to you? What kind of a relationship did you have with Mrs. Clinton in this regard?

Mr. NUSSBAUM. That's a good question, Senator. I have known Hillary Clinton for over 20 years now, 21 years, and in the White House we had quite a good relationship when I became Counsel to the President. Hillary Clinton and I have talked on many occasions in our lives. If Hillary Clinton wants to say something to me, she says it to me. Hillary Clinton is not shy and as this body has now seen, I am not very shy. If she wants to deliver me a message, Hillary Clinton delivers me a message herself. If I want to deliver her a message, I deliver her a message myself. She doesn't need any messengers to deliver messages between her and myself.

Senator SIMON. So that even if, in theory, that kind of transaction were to occur, and there would be nothing wrong with her contacting Susan Thomases and then Susan Thomases contacting you, it is extremely unlikely that that kind of an exchange would take place. Is that correct?

Mr. NUSSBAUM. That's correct, Senator.

Senator SIMON. In the process of all of this, prior to this meeting on the 22nd, when you went through the documents—and there would be nothing wrong with this, but I simply ask the question—prior to that meeting on the 22nd, did you consult with President Clinton about the disposition of the documents?

Mr. NUSSBAUM. I did not.

Senator SIMON. Did you consult with Hillary Clinton on the disposition of the documents?

Mr. NUSSBAUM. I did not.

Senator SIMON. Then, one of the theories, and there are many theories wandering around for those who are conspiracy-oriented, one of the theories is that somehow you planted or someone planted this note of Vince Foster's in the briefcase prior to finding it on that Monday.

The fact that two witnesses, including Bill Burton, with whom you have worked, two witnesses said they saw litter in the bottom of the briefcase, suggests that whatever was there was there that first time on the 22nd, when you went through the briefcase. Is that correct?

Mr. NUSSBAUM. That's correct, Senator.

Let me just state, for all the conspiracy theorists around the country and the world, I did not plant that note in the briefcase.

Senator SIMON. There would be no reason for you to plant it, anyway, would there?

Mr. NUSSBAUM. There would be no reason for me to plant that note in the briefcase or anywhere.

Senator SIMON. I don't want to go over things repetitively, but you saw nothing on the 21st or the 22nd in that briefcase after you took the documents out?

Mr. NUSSBAUM. No, Senator. I saw nothing in that briefcase, and I am sorry about that today. Senator you have talked about mistakes being made from time to time in the past, and that was a mistake. I don't think any other mistakes were made, certainly not on the big issues, but that was a mistake. I am sorry I didn't discover the note in the briefcase on July 22. There is nobody in the world, Senator, who wanted to discover a note more than me on that day, giving some clue as to what was bothering Vince.

On the morning of, when was it, July 21, right after Vince's death, I received a call from Lisa Foster. Lisa called me about 7:00 in the morning, 7:30 a.m., I think she woke me up. This was the first night I slept. I didn't really sleep very much after Vince committed suicide.

Lisa said to me, in a calm voice but obviously she was terribly distressed, she asked, "Bernie, did you fire Vince yesterday?"

I said, "Lisa, I didn't fire Vince yesterday," as if, you know, Lisa, one, I couldn't fire Vince, I never wanted to fire Vince. It's inconceivable that I would fire Vince. I really had great affection and respect for Vince.

She said, "OK. I just wanted to know. I didn't think you did, Bernie. I just wanted to know because I am just trying to figure out a reason that Vince killed himself."

I said, "I know, Lisa. I know. Hopefully, maybe, you know, one way or another we will figure out the reason."

It was a very emotional conversation. It wasn't very long, and, as I say, neither of us were crying. We were talking to each other. It was my first conversation with her since she found out and I found out that her husband died.

So there was nobody in the world who would want to find a note or a list, a handwritten list, more than me. If I would have been delighted—not delighted, that's the wrong word—I would have been pleased to discover those handwritten scraps on July 22 in that briefcase because that would have answered Lisa's question, it would have answered my question, as to what was really bothering him at that time to such an extent that he would take his life, that we could see a line that, "Ruining people in Washington is considered sport, and I was not made for Washington."

It helped me understand a little more why he took his life, and perhaps it helped Lisa understand. But my point is there was no reason for me not to want to find a note. There was every reason for me to want to find a note, to answer her questions and my questions. I am sorry I didn't find a note on July 22. I am sorry I made that mistake, and I was pleased, in the final analysis, when the note was discovered by Neuwirth on July 22, because now at least we had some of the answers.

I was pleased. I knew it would cause a stir. I knew law enforcement authorities would be upset as when they realized that the note wasn't discovered on the 22nd. I knew people would try to sort of cover themselves in some fashion. I understood that. It's a natural human reaction. I am not even blaming people for that. But nonetheless, I was happy we found it. I was unhappy we found it 4 days later, but I was happy we found it because now Lisa could have some of the answers and I could have some of the answers that we were both looking for.

Senator SIMON. I thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Bond.

Senator BOND. Thank you, Mr. Chairman.

Just to follow up, Mr. Nussbaum, earlier today you indicated that you told Ms. Williams to check with the First Family regarding who was to receive the files. Did you specify precisely with whom she should check?

Mr. NUSSBAUM. No, I think I just said, "Check with the Clintons, who they want these files to go to. I presume it will be Bob Barnett of Williams & Connolly, but you should check with them." That's how I remember it.

Senator BOND. That afternoon or later that evening, the files were transferred by Ms. Williams, with the assistance of Mr. Castleton, to the residence?

Mr. NUSSBAUM. That's correct, Senator.

Senator BOND. You had seen a Whitewater file in the files? Did you see the Whitewater file in those files you transferred to the residence?

Mr. NUSSBAUM. There was a Whitewater file in those files. I now know that. But since Whitewater did not, as we discussed before, was not in my consciousness. It was just another investment file that I was sending over. It was another personal financial file that I was sending over.

I have no memory actually, Senator, of seeing the word Whitewater or not seeing the word Whitewater because it would have made no impact on me at that point in time. Today it would, Senator.

Senator BOND. And, in fact, after those files were transferred to the residence, they must have been reviewed because one file was returned, was it not?

Mr. NUSSBAUM. What I remember about that, Senator, is that at some point a file was returned, but not necessarily from the residence. I am not positive at this point where the file was returned from. It could have been from the residence, or it could have been from Maggie's office, perhaps.

Senator BOND. But you think Ms. Williams returned it?

Mr. NUSSBAUM. I think Ms. Williams returned it or was involved in the return in some fashion. It was a file that had to do with the decorators or the ushers or something to do with decorating the White House, which was sort of an official thing, and that file then came back. I am not positive if it was one of the files that we sent out. I just don't know. I just don't remember at this point.

Senator BOND. So the file just came to you out of thin air?

Mr. NUSSBAUM. Well, somebody—my best memory is Steve Miller, who was working on these issues with Foster—somebody at some point told me that a file had been returned or a file had come back with respect to this issue. That's what I remember about it.

Senator BOND. Was it your understanding that that file had been in Mr. Foster's office, had left, and was coming back?

Mr. NUSSBAUM. My memory today is vague on that, on that subject. I just don't remember. I remember a file came back, and it could have been a file from Mr. Foster's office. I don't say it couldn't have been. It was a file with respect to the residence, with respect to the decoration of the residence.

Senator BOND. But you do know that the files did go to the Clinton residence?

Mr. NUSSBAUM. That's correct.

Senator BOND. If that file had been one of those that had gone to the residence, obviously somebody had to take some action to send it back.

Mr. NUSSBAUM. Well, somebody made a judgment, yes, Senator.

Senator BOND. Somebody made a judgment to send it back.

Mr. NUSSBAUM. Absolutely. And somebody must have looked at it, made a judgment. If it was that—I don't know if it was that—but if it was that, somebody looked at it and made a judgment that this is not a personal file and sent it back.

Now, Senator, there has been a lot of talk about this. I understand that no one, at least the President and the First Lady, did not review files at the residence.

Let me say to you, Senator, as far as I am concerned, it would have been totally proper for the President or the First Lady, if they wished, to review their personal files. I find nothing wrong or suspicious about that.

Senator BOND. But if they had, Mr. Nussbaum, wouldn't you have found it surprising that Mrs. Clinton would have said on April 22 to an ABC news reporter, "Then Mr. Nussbaum distributed the files according to whom he thought should have them," and did not mention that in fact they had had those files in their residence? Wouldn't that be unusual?

Mr. NUSSBAUM. This was——

Senator BOND. Afterwards. You say there is nothing wrong with Mrs. Clinton reviewing the files.

Mr. NUSSBAUM. There is nothing wrong.

When was this press conference?

Senator BOND. Afterwards.

Mr. NUSSBAUM. When?

Senator BOND. April 1994, explaining why nobody had, until just a few months previously, known that there been personal files brought to the residence and prior to the time anybody admitted that the files had gone to the personal residence. Would that not have been improper?

Mr. NUSSBAUM. No, Senator, it would not have been, because I think your chronology is in error. By the end of December 1993 and early January 1994, it had emerged; the fact had been publicly stated that files had gone to the residence prior to going over to Williams & Connolly. That was a public fact at that time.

When Mrs. Clinton had a press conference, which was after I left the White House, it had already become public that the files had gone to the residence first.

Senator BOND. My institutional memory, Mr. Nussbaum, is that it took us 6 months to find the files had gone to Williams & Connolly. It took us 6 months beyond April 1994 to find they had gone to the residence, and the statement by Mrs. Clinton on April 22, 1994, is inconsistent with their having gone to the residence.

Let me defer to Mr. Chertoff to ask a follow-up question.

Mr. CHERTOFF. I just wanted to get this straight, Mr. Nussbaum, because you are now indicating that the file that came back to you, you are not sure it came from Mr. Foster's office?

Mr. NUSSBAUM. I am not positive at this point it came from Mr. Foster's office.

Mr. CHERTOFF. I want to take you back about 3 weeks, July 13, 1995.

Mr. NUSSBAUM. What page?

Mr. CHERTOFF. You're reading my mind; page 406, line 17.

In the files, and we are talking here about Mr. Foster's files, did you check to see whether commingled in particular files were particular documents?

Mr. NUSSBAUM. What page?

Mr. CHERTOFF. Page 406, line 17.

Question: In the files, did you check to see whether commingled and particular files were official documents?

Answer: We sent over, we did check to see whether we were sending over personal records as opposed to White House Counsel records, and we made an effort to send over solely personal records, and actually one record was sent over and returned.

Answer: Which record was that?

Question: Who returned it?

I'm sorry:

Answer: A record with respect to the residence. A residence file.

Question: Who returned it?

Answer: I think Ms. Williams returned it.

Question: When did she return it?

Answer: Sometime thereafter.

Question: When thereafter?

Answer: Within a matter of days.

Does that ring a bell?

Mr. NUSSBAUM. Will you turn to page 412, Mr. Chertoff? Mr. Chertoff, turn to page 412.

Mr. CHERTOFF. Before I turn, you mean after you left the room and consulted with your attorney?

I am asking you, Mr. Nussbaum.

Mr. NUSSBAUM. Does it ring a bell that I testified like that? Yes, it rings a bell.

Mr. CHERTOFF. All right. That's my point.

Mr. NUSSBAUM. Now, can you turn to page 412?

Mr. CHERTOFF. Wait a second. We will put this entire deposition in the record.

Mr. NUSSBAUM. Could I read from page 412? Could I, please?

Mr. CHERTOFF. I would appreciate if you didn't do it on my time, Mr. Nussbaum.

The CHAIRMAN. We will give you an opportunity to do that. But let counsel proceed, and you will have an opportunity to do that.

Mr. NUSSBAUM. It is exactly pertinent, Mr. Chairman, to the testimony he is talking to me about. This question was asked on page 412, and I gave an answer on page 412 totally consistent with what I just testified here.

Mr. CHERTOFF. That's 6 pages after the answer I read you originally gave.

Mr. NUSSBAUM. I don't think it's inconsistent with the prior answer. But I think if you want to read to me from my deposition, Mr. Chertoff, you should be complete and you should be fair. So why don't you let me read from page 412?

Mr. CHERTOFF. Mr. Nussbaum, let me tell you something, and we have both tried a lot of cases and I am well aware of the rule of completeness.

Mr. NUSSBAUM. Thank you.

Mr. CHERTOFF. I am also well aware the rule does not entitle the witness to have things from all over a document read at the same time he is being asked questions. You know that as well as I do.

Mr. NUSSBAUM. No, Mr. Chertoff.

Mr. CHERTOFF. I am also aware that the clock is running.

Senator DODD. Give him a chance to answer. You may not like the answer, but give him a chance to answer.

Mr. NUSSBAUM. I want to read from pages 411 and 412.

The CHAIRMAN. Senator Sarbanes, I am yielding to this side. I am attempting to be as fair and scrupulous as possible, but when a witness is nonresponsive, a Senator or counsel has the right to ask the witness to be more specific.

Now, Mr. Nussbaum wants to read from 412. That's fine. We said we would put everything into the record. We will do exactly that. We yield to you, Senator Sarbanes, and you can ask Mr. Nussbaum to read that into the record, but it will be on your time.

Mr. NUSSBAUM. It will be very quick. I won't take up too much time.

The CHAIRMAN. That's fine.

Senator SARBANES. First of all, Mr. Chairman, I intend for Mr. Nussbaum to have a full opportunity to give a full answer.

The CHAIRMAN. We will do that and we will be here Thursday.

Senator SARBANES. I would suggest that it would serve everyone's purposes if that were allowed to happen, since we are all trying to find out what happened, and I don't think selectively quoting a deposition and then not allowing the deponent to complete his response contributes to finding out what happened. Let me just give you a couple of examples of that.

The CHAIRMAN. Well, that is an unfair characterization because counsel had a right to receive a response to his question and afterward Mr. Nussbaum would have been perfectly within his right to say, "But I would also like to refer counsel to the fact," if I might, "to the fact that on page 412 I gave a further explanation." I think that is the orderly way of proceeding.

You cannot permit a witness, Mr. Nussbaum or anyone, to answer the question as he chooses by referring to another page. Mr. Chertoff had a right to that explanation, and then Mr. Nussbaum had a right to say, "But, counselor, in fairness, I would like to point out that at such and such a page, this is what I said to more completely cover the issue."

Now, let's start the clock over again. You have 10 minutes, and I recognize Senator Sarbanes.

Senator SARBANES. Let me just make this observation. I was listening very carefully, and that's exactly what Mr. Nussbaum was trying to do. Mr. Chertoff quoted his deposition to him. He acceded to the quotes that were made to him from his deposition and then said he wanted to add something from another page in a fuller explanation. In fact, the quotes that Mr. Chertoff put to him stopped and the next question was: "When thereafter?" And the answer was: "Within a matter of days." That was asked.

The next question was: "Before the documents went to Williams & Connolly?" And the answer was: "I don't know. I don't remember at this point," which for the purpose of this line of questioning I think was a relevant answer. Now, we stopped short of that. No one picked up on that. Mr. Nussbaum then said, in fuller explanation, he wanted to go to page 412, and I am going to give him a chance to do that in just a second.

Senator SIMON. If I could ask if you would yield for 20 seconds?

Senator SARBANES. I yield to the Senator.

Senator SIMON. I would point out one other thing. When Mr. Chertoff says, "OK, we will put your full deposition in the record," that doesn't take care of people who are watching this on television. I think, in fairness to witnesses, they ought to have a chance to give a balanced presentation here.

The CHAIRMAN. I will, at the appropriate time, have all 6 pages read into the record and put on the monitor. And I am serving notice that we are going well beyond 4:00 p.m.

Senator SARBANES. I think we should go on beyond 4:00 p.m.

The CHAIRMAN. We will go tomorrow and Friday.

Senator SARBANES. Fine. We should do a proper and thorough inquiry.

The CHAIRMAN. That is correct.

Senator SARBANES. I agree with that, Mr. Chairman.

The CHAIRMAN. Well, we are going to run the clock the way you want it.

Senator SARBANES. All right.

The other point I want to make before I yield is on the Adams depositions talked about earlier. This is the question to Mr. Adams on the disposal of the documents. This is Mr. Chertoff:

Question: I understand that. I am not suggesting that he did otherwise. Now I am focusing at the end of the review of the materials in Mr. Foster's office by Mr. Nussbaum. He indicated that he intended to disperse the materials in the category of personal to Mr. Foster and his family to Mr. Foster's family representatives, and those pertaining to personal matters of the President and Mrs. Clinton?

Answer: To their personal attorney.

Question: To their personal attorney. And the other materials to other individuals in the White House Counsel's Office who would then be reassigning the matter?

Answer: That's correct.

Now, in his testimony here, Mr. Adams was also asked:

Question: It was your understanding, was it not, that following the review of the files that the personal files relating to Mr. and Mrs. Clinton would be sent by Mr. Nussbaum to the personal attorneys for Mr. and Mrs. Clinton?

Mr. ADAMS. That's correct.

Question: And neither Mr. Margolis nor you voiced any objection to that. Isn't that so?

Mr. ADAMS. That's correct.

In light of some of the questioning that has transpired here, I think it's important to get that on the record.

Mr. Nussbaum, if you would now address the question of the additional material in your deposition which you wanted to present to the Committee.

Mr. NUSSBAUM. Yes, this starts on page 411 and it runs onto 412. This is about the returned file.

Question: [by Mr. Chertoff] Who brought the file back?

Answer: That I don't remember. Either Ms. Williams or Mr. Neuwirth. Even though they're quite distinct, one of them brought the file back.

Question: Where did they bring it back from?

Answer: I don't know, because I wasn't there when the file was brought back, and I am not sure it was brought back from the residence or from Ms. Williams' office where this file was. It was a residence file, and we made a determination that it was not a personal file that we should send to the Clintons' personal lawyers.

That's all that happened here. We came across a residence file which was returned to Mr. Foster's office for Mr. Neuwirth to work on in the future, just like Mr. Foster worked on residence matters with Ms. Williams and Mr. Neuwirth.

Question: It was originally a Foster file. Right?

Answer: No. It is a White House residence file which Mr. Foster worked on.

Question: Which was in his office?

Answer: I'm not positive it was in his office. It was either in his office or Ms. Williams' office, but it was a matter he worked on.

Question: But it originated in Mr. Foster's office?

Answer: I'm not a hundred percent positive of that. It may have originated in Mr. Foster's office and gone out or was returned, or it may have been in Ms. Williams' office and was put into Mr. Foster's office. But it was a residence file.

There was a discussion as to whether this was a personal file that should go to the Clintons and their new personal attorneys and was determined that it was not a personal file, it was a file that should stay in the White House Counsel's Office so we should continue to work on that matter.

I yield the balance of my time to Senator Dodd.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Thank you, Mr. Chairman and Senator Sarbanes.

Mr. Chairman, I would hope as well, and I don't want to belabor the point, but I think we all made a commitment, to begin with here, that these hearings, we wouldn't act or people wouldn't be acting in a prosecutorial fashion or in the role of defense counsel. That's not the role of a Congressional hearing, but rather to try to elicit the full story here over the matter that we have been charged with by our colleagues as a result of the adoption of the resolution which created these hearings.

As we all can see, the depositions are very valuable to us, but it is obviously a combination of the deposition and the witness' personal appearance here. Not all of us, obviously, were privy to depositions, and the demeanor of an individual responding with further recollection can be of great value.

I would hope that as we proceed along here, we will see to it that witnesses get a chance to give us their full answer. We may not like it, we may disagree with it, we may argue with it in the context of an earlier deposition, but I think in fairness we have got to give you a chance to respond fully to it.

Mr. Nussbaum, I have raised these same questions with other witnesses. Quickly, you have addressed them in your own opening statement and they have been addressed by others to some degree, but I just would like to tighten down on it. It comes down to the

basic, underlying questions I think that we have been charged to answer here.

So I will raise them to you as I have with every other person who was at the White House or involved in these 2 or 3 or 4 days and involved with the Foster papers. The questions are, very briefly:

On or after July 20, did you ask anyone, instruct anyone, to destroy any documents from Vince Foster's office?

Mr. NUSSBAUM. I did not.

Senator DODD. On or after July 20, did you personally, yourself, destroy any documents from Vince Foster's office?

Mr. NUSSBAUM. No, Senator.

Senator DODD. On or after July 20, did anyone ask you or instruct you to conceal from law enforcement officials any documents from Vince Foster's office?

Mr. NUSSBAUM. No, Senator.

Senator DODD. And last, at any time, did anyone ask you or instruct you to take any action to impede, obstruct, or interfere with law enforcement's conduct during the investigation of Vince Foster's papers?

Mr. NUSSBAUM. No, Senator.

Senator DODD. I appreciate your response then.

Now, let me come back to a question. I gather you have already had some discussion with Senator Carol Moseley-Braun of Illinois about policy issues, a subject matter I don't suspect we are going to dwell on at great length here, but it might be worthwhile at some point because I think if anything comes out of these hearings in terms of beyond this particular fact situation is how we might deal with situations that will inevitably happen, regrettably, in the future. Hopefully not of a suicide nature, but with the death of White House personnel and handling of papers and documents.

I would be interested just in looking back now, on the question of the issues involving the so-called sealing or locking or securing offices and so forth. Do you have any second thoughts or additional thoughts?

Given the confusion on the night of July 20, given the high state of emotion, we have had contradictory testimony about whether or not the Park Police actually asked for that. Obviously, the office was locked, we have information, whether someone asked for it or not. But I would just be curious, from your perspective, how you might respond to that?

Mr. NUSSBAUM. On July 22—excuse me, on July 21, at about 10:00, 11:00 p.m., after a discussion with my associates, we determined to secure the office by having a Secret Service agent stand outside. The night before, it did not occur to me. As I said, it wasn't a crime scene. Thinking back, there would have certainly been no harm, and probably a lot of good, in having a Secret Service agent stationed outside that office as soon as I got to that office at 10:45 p.m. I locked the door. The office is in the White House. It's not far from the Oval Office. It's not exactly available to the general public to wander into the White House Counsel's suite.

Having said that, thinking back, if it would have occurred to me, and it's natural that it didn't, in my mind, but if it occurred to me on the night of July 20, I would have called for a Secret Service agent at that point and had him stand outside the door, instead of

waiting until the next morning at 11:00 a.m., although by and large the office was locked between the night before and 11:00 a.m. the next day. Yes, I think, if I was doing it all over again, that I might do differently.

Senator DODD. Are there any other aspects of this, with the benefit now of some weeks and months looking back—and I realize the red light is on—but just to finish this thought, and I have read your opening statement carefully and listened to it carefully, and your last line of “no regrets,” and I appreciate the emotions behind that statement, but I wonder if there are other aspects of this that you think may be worthwhile to share with this Committee as to what—and again, no one is suggesting the 20/20 hindsight view, but in looking back on some of these matters and how they were handled, would you do anything else differently?

Mr. NUSSBAUM. Well, yes. As I said in my statement and I said before to Senator Simon, I would have looked at the bottom of the briefcase and I would have scooped out the yellow pieces of paper. I am sorry that they weren't found on July 22. I am sorry for the reasons I gave to Senator Simon. I am sorry because it has created some sort of aura of suspicion. That was a mistake.

We looked at the trash. We looked at the burn bag. We looked at all the pieces of paper in the office. But I didn't see those little yellow scraps, and I didn't pull them out. I am sorry about that.

Senator DODD. Let me ask you last, and the heart of the question, I suppose, when it comes to this issue of the question of how the search was done. Now, you outlined options.

Senator SARBANES. Chris, we are trying to watch the clock.

Senator DODD. I apologize.

Senator SARBANES. I think we had better stick to the clock.

Senator DODD. I will come back to that.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. I just want, Mr. Nussbaum, since I began with page 406 and 407 and you then moved to page 411, to include the middle part in there, so that we can capture a sense of, and understand the dynamics going on in the deposition. Now, you volunteered the answer initially in response to the question about whether official documents were commingled in files. You volunteered the answer at line 22, “And we made an effort to send over solely personal records, and actually one record was sent over and returned.” Right?

Then I think we read down to line 15 at page 407. I would like to ask you to read from line 16, page 407, up to the point that you were reading from when you supplemented your answer, which I think was the very beginning of page 411. Why don't you read that in now in its entirety?

Mr. NUSSBAUM. Starting where?

Mr. CHERTOFF. Starting at page 407 at line 16, which is the point at which I think we stopped, and then concluding at the point where you began again, which was at the top of page 411, or actually I think it was on page 411 at line 9. So why don't you read that middle portion? Then there will be no question that we have the complete picture of what the first answer was, what the answers were then in the middle and where the answers ended up.

OK? We are putting it on the thing, and we will follow along. Page 407, line 16.

Mr. NUSSBAUM. Page 407:

Question: But you are quite sure Ms. Williams returned the document?

Answer: No, I am not quite sure Ms. Williams returned the document. I believe Ms. Williams returned the document. A residence file was returned. There was a file that was returned because we were making an effort to send over solely personal documents which had been used, yes, which were—

Mr. CHERTOFF. Which were in the White House?

Mr. NUSSBAUM. Yes. Excuse me.

. . . which were in the White House Counsel's Office because there was an official purpose. The purpose was now over. Vince Foster was dead. We weren't going to be using those files now, so we sent over the personal records to the Clintons and their personal attorneys.

Question: Did Ms. Williams tell you who had made the decision to return the document?

Answer: No.

Question: Did she say anything about how she came to return it?

Answer: It was some statement merely that this concerns the residence. It was not really a private file, although the Clintons live in the residence.

And then my attorney asked, "Can we take a break?"

We took a break.

Mr. CHERTOFF. Wait. Now, read it, please, Mr. Nussbaum.

Mr. NUSSBAUM. You want me to read it?

Mr. CHERTOFF. Yes, please.

Mr. NUSSBAUM. Sure.

Mr. PEDOWITZ. Can we take a break for a minute?

Mr. CHERTOFF. Can I hear an answer to the question?

Mr. NUSSBAUM. And, consequently, the documents should remain in the White House Counsel's Office.

Mr. CHERTOFF. Can you remember any discussion with Ms. Williams concerning this document when she returned the document?

Mr. PEDOWITZ. I would really like to talk to my client for a moment, and he will answer the question.

[Witness conferred with counsel.]

Mr. CHERTOFF. You had an opportunity to consult with counsel?

Mr. NUSSBAUM. Yes.

Mr. CHERTOFF. Can I get the last question read back?

[The reporter read the record as requested.]

The WITNESS. As I indicated in my testimony, look back at the record. I am not even certain I had this discussion with Ms. Williams. I am not positive. It's either Ms. Williams or Mr. Neuwirth I had a discussion with. I remember discussion with regard to a residence file. A file concerning the residence should remain in our office rather than be sent over as part of the Clinton personal files to the Clintons and their new personal attorneys, and I had this discussion either with Ms. Williams or Mr. Neuwirth. It was one of them. That's what I remember.

Mr. CHERTOFF. The conversation occurred after the documents had been taken out on the 22nd. Correct?

Answer: Yes.

Question: And it's very hard to confuse Mr. Neuwirth and Ms. Williams physically, isn't it?

Answer: Of course. But they're both involved in the subject matter. The reason Mr. Neuwirth is involved in the subject matter is because Mr. Neuwirth was working on matters concerning the residence. He has been working with Mr. Foster concerning matters of the residence and was working with Ms. Williams with matters involving the residence. And one of them said that the file should remain in the White House Counsel's Office.

Question: Who brought the file?

Answer: So why is that so strange that it's hard to confuse Mr. Neuwirth and Ms. Williams and Mr. Neuwirth?

Question: Who brought the file back?

Question: That I don't remember. Either Ms. Williams or Mr. Neuwirth. Even though they're quite distinct, one of them brought the file back.

Question: Where did they bring it back from?

Answer: I don't know, because I wasn't there when the file was brought back, and I am not sure it was brought back from the residence or from Ms. Williams' office where this file was. It was a residence file, and we made a determination that it was not a personal file that we should send to the Clintons' personal lawyers.

That's all that happened here. We came across a residence file which was returned to Mr. Foster's office for Mr. Neuwirth to work on in the future, just like Mr. Foster had worked on residence matters with Ms. Williams and Mr. Neuwirth.

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Answer: No. It is a White House residence file on which Mr. Foster worked on.

Question: Which was in his office?

Question: I'm not positive it was in his office. It was either in his office or Ms. Williams' office, but it was a matter he worked on.

Question: But it had originated in Mr. Foster's office?

Answer: I am not a hundred percent positive of that. It may have originated in Mr. Foster's office and gone out and was returned, or it may have been in Ms. Williams' office and was put into Mr. Foster's office. But it was a residence file. There was a discussion as to whether this is a personal file that should go to the Clintons and their new personal attorneys, and it was determined that it was not a personal file. It was a file that should stay in the White House Counsel's Office so that we could continue to work on this matter.

Mr. CHERTOFF. Thank you.

Thank you, Mr. Chairman. I yield the balance.

The CHAIRMAN. We will start with Senator Grams, and I know you can't finish, and then we will come back to you in the next round.

OPENING COMMENTS OF SENATOR ROD GRAMS

Senator GRAMS. Thank you very much, Mr. Chairman.

Mr. Nussbaum, good afternoon.

Mr. NUSSBAUM. Senator.

Senator GRAMS. Let me take you back again to the night of July 20, 1993, after you heard of the death of Vince Foster. You went to the White House residence, where you saw the President. Is this correct?

Mr. NUSSBAUM. That's correct, sir.

Senator GRAMS. The President himself, a short time later, went to the Foster home to pay his condolences. But instead of joining him, you went to the White House Counsel's suite to make phone calls. Were you asked by the President to go there?

Mr. NUSSBAUM. No, sir.

Senator GRAMS. To the residence or to the suite? Nobody made a recommendation of what you should do next?

Mr. NUSSBAUM. That's correct.

Senator GRAMS. Were you asked by anyone to go there, anyone else besides the President?

Mr. NUSSBAUM. No, I made a decision to go there. I made a decision to go first to the residence and see the President after I heard of his death, and then I made a decision instead of going with the President to the Foster home, which occurred to me to do, I said, "No, no," to myself, "this can get out. My staff could hear it on the telephone, on the news. I must go to my office and make phone calls."

Senator GRAMS. So you arrived at the White House Counsel's suite. Did you go there alone?

Mr. NUSSBAUM. I did go there alone, yes, sir.

Senator GRAMS. Now, Patsy Thomasson claimed that you and she entered the office together. I know we are going to be stepping

on some ground that's got a lot of footprints on it, but here we run into the first of a series of contradictions between your sworn deposition and the testimonies under oath by Patsy Thomasson, Maggie Williams, and the Secret Service officer, Henry O'Neal. And that is over the contradictions of who entered the office first.

I will just read these quickly.

Mr. NUSSBAUM. Sure.

Senator GRAMS. Patsy Thomasson testified under oath that she ran into you on the way up, and the two of you entered the office together. Maggie Williams testified under oath that she entered the room to find Ms. Thomasson alone in the office and that you entered a bit later. Officer O'Neal testified, again under oath, that after he unsecured the suite at 10:42 p.m. that evening, which the alarm records, by the way, show from the night, that he saw you enter the office with someone behind you who appeared to be a woman. Yet you claim that you entered only to find Ms. Thomasson and Ms. Williams in the office together.

These same contradictions arise over who left the office last.

Ms. Thomasson has testified, again under oath, that you and she left together just as you had arrived. Ms. Williams testified under oath that you and she left Ms. Thomasson alone in the office that night. Officer O'Neal testified under oath that before he secured the office at 11:41 p.m. that evening, that Ms. Williams was the last person to leave the office. Yet you claim that Ms. Thomasson, Ms. Williams, and you all left at the same time.

Now, there are four contradicting accounts over 1 hour on the second floor of the West Wing of the White House. The question is how can that be? How do you reconcile these accounts?

Mr. NUSSBAUM. That was a very tough night, Senator. That was a night that people were sick with grief. That was a night that people were walking around enormously sad. When you have that kind of situation, Senator, when people are like that, and that was that, people were walking around crying, people were walking around hugging each other that night.

When I saw the President, I didn't say a word to him, and he didn't say a word to me. I think we just reached out and hugged each other, and then we sort of parted as he went to the Foster home and I went to my office.

It was that kind of night. That was a tough night. We had just—10:45 p.m. is an hour or so after I learned that Vince had died. It's maybe less time after Maggie learned or Patsy learned. So I can fully understand when people think back to that evening, that they could have differing recollections about who went in with whom and what time.

I have a clear memory of how I did it, and I have testified as to my clear memory. Obviously, that memory is not consistent with certain other testimony that you read. But to me, it's perfectly explicable, one, because the nature of the evening, as I just described.

Also, Senator, I just say to you I have had a lot of experience in litigation over 30 years, and it doesn't surprise me that with respect to these kind of events, that people could have different memories with respect to these events, Senator. I dare say, Senator, that if you asked 40 people in this room who were here this morning to testify, to testify now as to what happened this morn-

ing, you would start getting different recollections. But that particular night, Senator, and those particular recollections, I think mostly arise from the grief-stricken nature of the evening, from the emotional nature of the evening.

I hope I have helped you answer that, Senator.

Senator GRAMS. I can sympathize with the grief, but these are four very distinct stories that they remembered very clearly.

Mr. NUSSBAUM. Correct, Senator.

Senator GRAMS. But Officer O'Neal wasn't in the grieving process. Should we believe him, then, as being somebody who had nothing to grieve about that night, so to speak? Maybe he felt bad about the news.

Mr. NUSSBAUM. Yes.

Senator GRAMS. But he has a very clear recollection of who came and who went and who was there and who wasn't.

Mr. NUSSBAUM. Senator, you are in a better position to judge Officer O'Neal's credibility than I am. I wasn't here. You were here. You saw him testify, and I leave it to you and to your fellow Senators to make a judgment.

Senator GRAMS. I will end right there, Mr. Chairman, and I will be back.

Senator SARBANES. Well, Senator Grams, there is a vote, but we could continue. How much more time would you need? We could continue.

Senator GRAMS. Probably 10 minutes.

Senator SARBANES. Ten minutes.

The CHAIRMAN. So why don't we break, and then when we vote, this side will have it, and then we will go back to Senator Grams so he can continue. We will take a recess for 15 minutes.

[Recess.]

The CHAIRMAN. I intended to continue with Senator Grams, but he is not here at this time, so rather than delay, because I want to try to keep the process moving, I'm going to recognize Senator Shelby at this time, and then later we'll return to Senator Grams.

Senator Shelby.

Senator SHELBY. Thank you——

Senator KERRY. Mr. Chairman, point of procedural information. I believe Senator Grams finished his 10 minutes.

The CHAIRMAN. He had 3½ minutes, but I—oh, you're right. I think you would start here first.

Senator KERRY. I think it starts here.

The CHAIRMAN. Fine.

Senator KERRY. But before you complete that task, I've noticed that today—I don't think we've raised this issue—but there's been an extraordinary amount of yielding of time back to people, the same person. The rule is that Senators have to be here to yield their time. Now, I don't have a clue, I don't think the record shows who has yielded all of this time, and so in a sense, there's been sort of a deviation from the process, which we have not objected to, but I just want to——

The CHAIRMAN. I ask the Senator, if he finds or thinks that there would be anything outside of the scope of the agreement that would not permit the Chairman or the Ranking Member to recognize a

Member who is ready, when other Members are not. And obviously, if they are not, other Members, not the Ranking Member——

Senator KERRY. No, I agree completely. No, no, no, Mr. Chairman. I completely agree with that. I thought, though, that after one round of questioning, for instance, with Senator Shelby immediately thereafter we went back to Senator Shelby.

The CHAIRMAN. There is no other Senator on our side here other than myself so I would then be yielding and I don't want to go through the process of formally announcing that I would be yielding to Senator Shelby.

Senator KERRY. I see. Fair enough. I just wanted to understand the procedure so it will help us on this side to schedule our own appearances.

Senator SHELBY. Mr. Chairman, I wouldn't mind if you saw fit to yield about an hour to me. I would take it; OK?

The CHAIRMAN. If I had the ability I would. However, it is Senator Sarbanes and it is on the Democratic side, and they have the right to designate a person for up to 10 minutes.

Senator Sarbanes.

Senator SARBANES. I yield to Senator Murray.

OPENING COMMENTS OF SENATOR PATTY MURRAY

Senator MURRAY. Thank you, Mr. Chairman.

Mr. Nussbaum, I'm not a lawyer, so I don't go through all the legal technicalities and I try and sit back and observe the whole story. And it keeps occurring to me that we're dealing with a very short timeframe, 2 or 3 days, and we're going through it in minute detail, over and over, words and actions and thoughts and why people did what and who said what to whom, and trying to remember all of that.

You were there at the time, you were at the White House, you were a friend of Vince Foster. He committed suicide. Can you tell us what your sense of the aura of that time was, and whether people were thinking I need to remember exactly who said what to whom and what happened in every single moment, or what was the general sense.

Mr. NUSSBAUM. Well, the night of July 20 was a terrible night. People were, as I said before, hugging each other, grabbing each other, crying. Everybody was very, very distraught that night, July 20, the night when we had the quick search for a suicide note in Vince's office, the night in which the President went over to the Foster home. That was a very, very tough night. And therefore it's not surprising to me, as I said to Senator Grams, that memories are different about that night.

But starting the next morning we're in the White House. This is the White House. This is sort of the center of our Government; to some extent, it's the center of the world, and you have a duty, you have a function to carry on. You have to do your job. Now, while people were terribly sad the next day, for example, the 21st, which was also an emotional day, that's the day that I made a speech to the entire White House staff along with the President who made, as I said before, a marvelous impromptu talk to the entire White House staff, 300 or 400 people, over at the Old Executive Office Building.

So while that was also an emotional day, the day after, because that's the day that most people found out about it. The night before only a handful of people basically knew about it. But beginning that day and certainly on the 22nd when the search was conducted and thereafter while people were terribly sad and continued to be sad, and indeed continue to be sad to this day, nonetheless, Senator, the White House was functioning. The Counsel's Office was functioning. I was functioning. I was not a basket case or anything like that. The first night I was very upset, but after that I was fine. We had our job to do, and we were doing our job. So that's what the White House was like at that time.

Senator MURRAY. I think there is this kind of general perception from everybody that everybody was in this frenzied mood of trying to hide something. And is it possible that this frenzied mood was more how do I deal with this, how can I cope with this, what can I do to make the day better?

Mr. NUSSBAUM. There was sadness, there was no frenzy, there was no hysteria, there was no paranoia, all of which words have been thrown around. There was a great sadness and people were looking to do, at all times, the right thing.

Now, there was a concern—and I don't know if it's been alluded to today, maybe it has. It's been a long day already. There was a concern for—I think Senator Sarbanes alluded to it—there was a concern for privacy. We didn't want to invade people's privacy. We didn't want to invade the privacy of the Foster family which had suffered such a blow.

So the idea of having people rummage through his office, anybody including Justice Department people, when it wasn't necessary and it wasn't appropriate was on people's minds. You know, that we don't want to—sure, he's a high Government official; sure, it's important to be investigated, but this notion somehow that this creates carte blanche for people to do anything they want, there was a sense in the White House that I felt and certainly I had the sense that we didn't want invasions, inappropriate invasions of privacy.

On the other hand, we had to cooperate with legitimate law enforcement investigations. I felt that very strongly as did the other people in the White House. So what I was faced with, and I was totally rational when I was dealing with this issue and not grief-stricken, I was faced with trying to reach a sensible accommodation. I did try to reach a sensible accommodation.

Senator MURRAY. I appreciate that. And looking back, we're trying to make you remember when you looked in a briefcase or what you did. In general, what was your memory of that day, do you have a specific memory that hangs out to you that you could describe to us specifically?

Mr. NUSSBAUM. With respect to the briefcase?

Senator MURRAY. No, with respect to the entire 3 days and what was happening. If we hadn't made you focus on a briefcase and focus on specific conversations, what would be the memory that sticks out for you?

Mr. NUSSBAUM. Well, the overwhelming memory is learning that a dear friend and colleague took his life, and this Senator Sarbanes did touch on. And why somehow we weren't alert enough to see it

since we worked so closely together—our offices were cheek-to-jowl, so to speak—and why I put things off and not dealt with the things that appeared to be bothering him, the Travel Office situation, and things like that that's what I remember when I think back.

You're right, I don't think about briefcases and documents. And is my recollection on this minute consistent with somebody else's recollection? I think of the loss of Vince and I think of the sadness that somehow we couldn't do more, the guilt that Senator Sarbanes mentioned, that we couldn't do more to stop it. But you know, I'm a sensible person—at least I try to be—and I understand that these things happen in life, that it's like a disease.

Senator MURRAY. I'm assuming that knowing that, as you go through this, that there is a public who is following all of this and you can't just deal with grief privately, that all of the world is watching how you do that.

Mr. NUSSBAUM. Right.

Senator MURRAY. In your opening statement, you talk about the cynicism that often arises through misperceptions and the public's growing cynicism of Government. And I think it's easy for all of us as public servants, to understand that it's important to appear to do the right thing.

If you had not conducted the search the way you did but according to the way Mr. Quinn had suggested, what do you think the public's perception would have been of that?

Mr. NUSSBAUM. It would have been worse; the way Mr. Quinn suggested, it would have been worse. Think of the headlines. Mr. Quinn was acting totally logically in making his suggestion. Indeed, as Mr. Quinn, in a vigorous debate with me, pointed out, Bernie, isn't this the way you would act in private practice. Would you let somebody just go through a lawyer's office without going in, reading every document yourself, listing them, inventorying them, and making a privileged log and things like that.

And I said, no, you're right, Jack, that's the way I would handle it in private practice, but I'm not in private practice. We're representing the President of the United States. I am worried about appearances and with respect to this, I am worried about public perception.

I think the appearance would have been much worse. The headlines would have been White House Counsel or White House or President or whatever bars the door to Foster's office, locks it up, keeps them out, claims to be making privilege—is making privilege list and list of documents. And is concluded as we would have concluded unless we found a note, concludes that there's nothing in the office that constitutes a suicide note, but refused to let anybody see the office, enter the office. That to me was wrong, seemed wrong, so I tried to reach a different kind of accommodation.

So I think actually this is—I think, I was the one, contrary to my public image, I was the one who had the greatest political savvy and the greatest public relations sense when it came to this thing. But these were close calls, and other people's calls deserve as much respect as mine.

Senator MURRAY. I appreciate that. You also discuss five principles that you believe are important to maintaining good political judgment, including doing the right thing and worrying less about

tomorrow's headlines than about the judgment of history. In your mind, was there anybody in the White House that was not interested in doing the right thing ethically and legally at that time?

Mr. NUSSBAUM. No. Everybody in the White House was interested in doing the right thing ethically and legally. But sometimes not everybody in the White House is willing to do some of the other things I said, which is defend yourself publicly. I think sometimes there's a readiness by too many people, in the White House as well as outside the White House, to sort of admit mistakes when there were no mistakes as if somehow that's going to stop the press from writing about you, somehow that will stop the Congress from investigating you. To me, all you do when you do that when you admit mistakes where there are no mistakes, all you do is you feed the beast. All you do is you make it worse. All you do is make it worse for yourself. If you are right, you should defend yourself. If you are wrong, you should admit errors. That's some of the other principles, and those principles not everybody follows, either in the White House or outside the White House.

Senator MURRAY. Thank you, Mr. Chairman. I see my time is about up.

The CHAIRMAN. Senator Grams.

Senator GRAMS. Thank you very much, Mr. Chairman.

Mr. Nussbaum, getting back now to the night of July 20, 1993 and we know it was a night of sadness at the White House—

Mr. NUSSBAUM. Yes, sir.

Senator GRAMS. —and we sympathize. I don't think anybody in America doesn't sympathize with the pain, especially that the family and the friends of Vince Foster felt.

You claim that as a result of the grieving that we have before us four very different recollections of what happened that night. But if you look at the depositions, you'll see that we have four very different stories of what happened, each one in conflict with the other about everything to do with who came in, what did they do that night, when did they leave, did they take anything or not.

Now, I know and I think everybody in this room has had or suffered the tragic or unexpected loss of someone, but that doesn't mean—it might mean that you might make bad judgments at the moment, but I don't think it clouds your memory of what happened. In fact, I can recall very vividly things that happened, conversations I had 10 or 12 years ago, experiencing those losses. So I don't buy the argument that somehow because of the sadness all—everybody involved, their memory somehow got clouded.

But Mr. Nussbaum, let's follow your story of that night of what happened. When you walked into Mr. Foster's office, were you at that time surprised to see Patsy Thomasson and Maggie Williams there? Were you surprised at all?

Mr. NUSSBAUM. I was surprised to see Patsy Thomasson there. I had a momentary sense of surprise, yes, sir.

Senator GRAMS. Did you ask them why they were there?

Mr. NUSSBAUM. Yes, I said what are you doing here.

Senator GRAMS. They told you looking for a note—

Mr. NUSSBAUM. Yes.

Senator GRAMS. That was enough to satisfy you?

Mr. NUSSBAUM. Patsy said we just got here, we're looking for a note. Maggie didn't say anything; she was sitting on the sofa crying.

Senator GRAMS. Did you ask them how they managed to unsecure the White House Counsel's Office, how did they even get into the office?

Mr. NUSSBAUM. No, I did not ask them that. I assumed that either Patsy, who was involved in administration, had a key or the cleaning people had opened the office and they just walked into the office.

Senator GRAMS. Did you ask them to leave? After all, you said correctly that a number of sensitive documents were in the White House Counsel's suite so was it appropriate to have either one of the ladies there?

Mr. NUSSBAUM. It would not have been appropriate for Patsy Thomasson certainly to examine the files in Vince Foster's office. She did not do so. She didn't do anything inappropriate. It was appropriate or it was—well, let me put it differently. It was to me a natural human reaction——

Senator GRAMS. You are sure there was—go ahead.

Mr. NUSSBAUM. It was a natural human reaction for her to be searching for a suicide note because that's the—what we were all feeling at that time. Instinctively, I understood that when she said it. If she had said to me, I'm here to examine Vince Foster's files to see if there is anything wrong that he was working on, I would have said get out of here, that's not your job, that's not your business or anything like that. She said to me I'm looking for a suicide note. I understood that. I said yes, I'm thinking about that too. And then for a brief 3 or 4 minutes, we looked at surfaces, not in files, but at surfaces for a suicide note.

Senator GRAMS. You weren't concerned that maybe some files were laying out in the open that she could have happened to see?

Mr. NUSSBAUM. No, I wasn't concerned because she wasn't—we were just looking, we were looking at the top of the desk and looking in the drawer. We were looking for an envelope basically which said, to whom it may concern, something like that. That's what we were looking for. We weren't looking into the books or anything like that. So she wasn't looking at anything inappropriate.

Senator GRAMS. Ms. Thomasson has testified that you didn't know each other very well. She claims—and this was her words—she was very low on the food chain. If that's true, did you know who Ms. Thomasson was?

Mr. NUSSBAUM. Oh, yes, I knew who Ms. Thomasson was. And while she's correct, I didn't know her that well, I didn't consider her very low on the food chain. I don't consider anybody very low on the food chain. In the White House, we were all colleagues and she was a colleague of mine.

Senator GRAMS. Now you said and you've testified that you were very concerned about people seeing maybe national secrets or top priority or sensitive materials, when we're talking about Department of Justice officials, FBI, who have very high clearances and you knew that——

Mr. NUSSBAUM. Absolutely.

Senator GRAMS. —but yet you had no qualms about having somebody that described herself as low on the food chain in having access before you got there.

Mr. NUSSBAUM. Senator, she said she just arrived. She wasn't looking into files or reading documents. She was looking on the surface in a natural human reaction shortly after a suicide. That was not a night about national security or clearances or anything like that, as I said earlier.

This is a natural human thing for somebody to want to go into an office and see if there's a note. I understood it. I was there with her all the time she was in the office except for the first instance I got in. There was nothing wrong with that and there's still nothing wrong with that.

Senator GRAMS. The Park Police, the FBI, the Department of Justice said that they wanted to also look through the files just for a note and yet you were afraid their eyes would scan something that they shouldn't see.

Mr. NUSSBAUM. I'm sorry to interrupt you, Senator. I have a tendency to interrupt Senators and I apologize to all of you collectively and individually, for doing that.

Senator SARBANES. I think that's a good point. I think let the Senators put the questions and then hopefully the Senators will let you put the answers, and we'll be able to move along.

Mr. NUSSBAUM. I understand that, Senator.

Senator GRAMS. I was just saying that it seems contradictory that you were so concerned that someone who had high clearance might happen to—when all they wanted to do was also just look for a note. They didn't want to scan papers or dig into files that might have been top secret or Supreme Court nominee background, but yet you denied them the ability to look at this, but yet somebody was sitting there with unfettered access, so to speak, and that didn't bother you that night?

Mr. NUSSBAUM. One group wanted to read the files—

Senator GRAMS. They didn't say they wanted to read them.

Mr. NUSSBAUM. They wanted to look through the files which mean read at least a portion of each of the files to determine whether—well, they said to determine whether it was a suicide note, but also whether documents were privileged and relevant. They wanted to engage in a substantive search, a substantive examination. I understood that.

Patsy Thomasson was not looking to engage in a substantive search or a substantive examination. All she was doing was looking on surfaces, not reading any documents. The others wanted to read documents and there certain obligations weighed on me, which I talked about earlier, the obligations of a lawyer to preserve the confidences of his client.

Senator GRAMS. Security officials have testified just the opposite. They said White House officials were afraid that they might see something, you're saying you are afraid that they wanted to look deeper, and that isn't what they were there for. They said they were there just to look for a note or any other material.

Mr. NUSSBAUM. If security officials so testified, they testified incorrectly.

Senator GRAMS. Mr. Nussbaum, did you lock up the White House Counsel's suite that night?

Mr. NUSSBAUM. My memory is I did. I know there is other testimony perhaps inconsistent with that. But my memory is that, in accordance with my normal habit if I'm the last one leaving, I turn on the alarm and I lock the door.

Senator GRAMS. Again, we're going to go back and I know this was a night of sadness, but like I still believe that it doesn't cloud memories, it might cloud decisions. But Ms. Williams testified under oath that you and she left Ms. Thomasson alone in the office. Is that true? When you left?

Mr. NUSSBAUM. No, that's not my memory.

Senator GRAMS. Officer O'Neill says that he is the one who secured the office that night, which the alarm records show from the White House.

Mr. NUSSBAUM. It's not, that's not—I gave you my best memory.

Senator GRAMS. So either Ms. Williams lied to the Committee or Mr. O'Neill has lied to the Committee?

Mr. NUSSBAUM. No.

Senator GRAMS. Now, in your opening statement—

Mr. NUSSBAUM. No. The answer is no. I want to finish that answer. The answer is I don't say—Ms. Williams certainly didn't lie to the Committee. Ms. Williams I know extremely well. Ms. Williams is a truthful person.

Senator GRAMS. Maybe Mr. O'Neill.

Mr. NUSSBAUM. Officer O'Neill, I do not know, but I don't believe he necessarily lied to the Committee. He's telling what he best remembers. And I am not lying to the Committee.

Senator GRAMS. In your opening statement this morning, you said that Ms. Williams and Ms. Thomasson and you were in Mr. Foster's office, you said for about 10 minutes.

Mr. NUSSBAUM. That's correct.

Senator GRAMS. But the alarm records show that the office was open for an hour that night. Now, Mr. O'Neill testified that he came back several times to check on the office to see whether he should lock it up, and each time in that hour somebody was in Vince Foster's office. So for 1 hour, there were people in that office with the ability to go through files and look at things that you said they shouldn't be looking at.

Mr. NUSSBAUM. I'm glad you asked that question, Senator, because you now enabled me to clear up a misapprehension and misunderstanding. Vince Foster's office is in the Counsel's suite.

Senator GRAMS. That's right.

Mr. NUSSBAUM. The alarm—when you shut Vince Foster's office alone, it has nothing to do with shutting the Counsel's suite. The Counsel's suite was open for an hour. Vince Foster's office was not open for an hour. Vince Foster's office was only populated that evening for 10 minutes. But the Counsel's suite, that's what triggers the records and the alarm. The Counsel's suite was open for an hour. There was somebody in the Counsel's suite, the Counsel was there, I was there, and what I was doing there is making phone calls for an hour.

What the White House records reflect with respect to the office being open for an hour is the entire suite is open for an hour. Fos-

ter's office is only part of that suite. So it's incorrect to say that people were in Foster's office for an hour. People were in Foster's office for only 10 minutes. The only person in the suite for an hour was yours truly.

Senator DODD. Could I add, was there a lock on Mr. Foster's separate office, no lock on that door?

Mr. NUSSBAUM. There was no lock on that door that night. We put a lock on the door the following night.

Senator GRAMS. Mr. Nussbaum, let me tell you that Officer O'Neill said that when he checked, there were people still in Mr. Foster's office. He said as he closed the door to lock it up, Ms. Lieberman was in the doorway, then Ms. Williams came out of Mr. Foster's office, came out. And then he went in, set the alarm and locked the door and he even rode down the elevator with Ms. Williams and Ms. Lieberman. He is saying for that hour there was somebody opening Vince Foster's office.

Senator KERRY. If I could say to the Senator, just to clarify, he couldn't have gone into Mr. Foster's office to set the alarm, because there was no alarm in the office.

Senator GRAMS. I thought that's where the switch was. He went into the suite to do it.

Mr. NUSSBAUM. The switch, Senator, is in Mr. Foster's office. It's the switch that you turn on the alarm, the switch for the entire suite——

Senator KERRY. For the entire suite.

Mr. NUSSBAUM. —for the entire suite is in Mr. Foster's office. So the normal practice when you close the suite, the suite consists of three rooms. It consists of the entry room where the secretaries sit, it consists of the Counsel's Office which is the largest room, and it consists of Mr. Foster's office. There's only one door to the suite. That one door gives you entrance to those three rooms.

When you close the office at night, what you do is you walk into Foster's office. You turn on the alarm, you go to the telephone, you call the Secret Service. You say this is Mr. Nussbaum, I'm leaving the Counsel's Office, I just turned on the alarm. You leave then the suite. You lock the door and you turn your key in the door. That's the normal way of doing it. What I remember doing that night is doing everything that I just described except probably calling the Secret Service.

But, in any event, if Officer O'Neill testified as you say he did, that people were in Mr. Foster's office as distinguished from the suite for an hour, he is dead wrong because I was there for that hour and no one was in Foster's office other than the 10 minutes that I described.

Senator GRAMS. Did you see Ms. Thomasson or Ms. Williams or Ms. Lieberman in the outer secretary office of the suite while you were in your office?

Mr. NUSSBAUM. No.

Senator GRAMS. Why would they be there rather than—you are saying they moved out of there, stayed in the suite but in the secretarial——

Mr. NUSSBAUM. They didn't stay in the suite. They left. My memory is we all left together. Maggie Williams, Patsy Thomasson, and I, and they then left. I don't remember seeing Evelyn Lieberman,

although she may have been on the second floor of the West Wing where the White House Counsel suite is.

Senator GRAMS. I just have a couple questions and I've lost a little time in the conversation. When you came in, Mr. Nussbaum, were there any cleaning people in the office as you entered? You said you only saw Ms. Williams and Ms. Thomasson——

Mr. NUSSBAUM. Correct.

Senator GRAMS. —were there cleaning people there?

Mr. NUSSBAUM. I don't remember seeing any cleaning people.

Senator GRAMS. Security Officer O'Neill was not standing there?

Mr. NUSSBAUM. I don't remember seeing Security Officer O'Neill. He's a new figure to me.

Senator GRAMS. One final question, Mr. Nussbaum. You testified under oath that no one asked you that night to seal Mr. Foster's office on the night of the 20th, and I want to put up, if I could, a file number or item number Z139. If you could, I know you've done a lot of reading today, but would you please read the second paragraph? This is from Sylvia Williams, or Sylvia Mathews I mean, who typed these notes up that night to recollect what she was doing. This wasn't a week later, this wasn't 9 months later, this was that night. Would you read the second paragraph for me.

Senator SARBANES. Is this a document we have in——

Senator GRAMS. Yes, this has been here before.

Senator SARBANES. What's the number of the document?

Senator GRAMS. Z139.

Senator KERRY. Who wrote it?

Senator GRAMS. Sylvia Mathews. She was answering the phones down in the Chief of Staff's Office the night Vince Foster died. She took a lot of the calls and did some of the communication; in fact, delivered a note to the residence earlier that night as well, but this deals specifically with the earlier testimony about whether Mr. Nussbaum had been asked to seal or to lock Mr. Foster's office.

Mr. NUSSBAUM. No, no, that's—now we're talking about two different things. I said that I believe I locked the office that night, and this says I locked the office that night. In a sense.

Senator GRAMS. But no one asked—I mean, I'm saying that no one asked you.

Mr. NUSSBAUM. But you asked me did anyone ask me to seal the office that night. This has nothing to do with sealing the office.

Senator GRAMS. We don't want to get into semantics. I shouldn't use the word "seal." I should use the word "lock" or "secure." Did anybody ask you to lock, secure, or seal the office that night? That is the question.

Mr. NUSSBAUM. Well, if that is the question the answer is, to my memory, no one asked me to lock, seal, or secure the office that night. I remember, my best memory, as a matter of course, when I left the office after the phone calls, I locked the office as I earlier described. No one had asked me to do it.

I remember then walking downstairs to the Chief of Staff's Office, where I think she was at this point, Sylvia Mathews. I remember walking downstairs after I had locked the office, walking into the Chief of Staff's Office, walking into the Deputy Chief of Staff's Office which is part of the suite, it was Roy Neel at the time, chatting with him about what a tragedy this was. Then I remember

Sylvia Mathews coming to us at that point and saying look, I've recovered the trash. This is something, I've recovered the trash from Foster's office. I said good, great. I said just leave it here in Roy's office. It was in a plastic bag at that time. Leave it in Roy's office, and we'll put it into Foster's office tomorrow.

The reason I remember that was I knew the office had been locked, I had already locked it and gone down. I was exhausted, I wanted to go home, I didn't want to go back up to the office and put the trash in. So that's my memory. It's inconsistent with the memory apparently of Ms. Mathews, but all I can do is, as the Senators here know, is give you my best memory.

Senator GRAMS. I know this isn't a good book but would you read that paragraph for me into the record, second paragraph on that memo.

Senator KERRY. Well, Mr. Chairman.

The CHAIRMAN. Yes.

Senator KERRY. Number one, we're way over in the red, but not to stop it, but just to point out, I think it's one thing for the witness to read at great length his own deposition. But if he's got the document in front of him, Senator has the document in front of him, it's on this big screen, I'm not sure why we serve so theatrical a purpose of having him read someone else's words.

The CHAIRMAN. Senator Kerry, please, I don't think we need to characterize our colleague's request that way. We're all Senators. You have a right to raise your questions. I'm going to give great latitude to you. I don't think that that is fair and I think it does a great disservice.

If we want to stop at this point I'll give the 10 minutes here and then I'll just go back to Senator Grams. I'll ask the other Senators to yield for the purposes of having this read. So we can do it either way. As a matter of fact, Senator Sarbanes, the clock has run. We'll go to Senator Sarbanes and I will then ask if all of my colleagues here will yield to Senator Grams for the purposes of his conclusion.

Senator GRAMS. Thank you, Mr. Chairman.

Senator SARBANES. Well, I'm going to yield to Senator Dodd. I take it, Senator Grams, you want Mr. Nussbaum to read the notes of Sylvia Mathews; is that right?

Senator GRAMS. I just wanted him to read it. If he doesn't want to, I'll read it but I thought it was fine if he would. We'll wait.

Senator SARBANES. If this is your last question I'll be happy to yield in order for him to read it in order to respond to your question.

Mr. NUSSBAUM. Should I read it, Senator? I'll read it, Senator, the second paragraph. "I then asked the three of them if anyone had made sure that the trash had not been dumped in Vince's office. At that point Bill said we should get Bernie and lock the office. I am uncertain what time that was, but probably after 10:00 p.m. I don't remember who told Bernie, but he went up and locked the office."

Senator SARBANES. The "I" in that paragraph is Sylvia Mathews, it's not you?

Mr. NUSSBAUM. No, it's not me.

Senator SARBANES. Right. I think we ought to be very clear about that because there might be some confusion.

Senator GRAMS. But her recollection is you don't know who told you but somebody told you to lock the office. She then went on to say you did go up to lock the office or she assumed you did so the recollection is that, by Sylvia Mathews, that someone had called or asked you to lock the office that night and you don't remember that. That's all I was asking.

Mr. NUSSBAUM. That's correct.

Senator GRAMS. Did you see Bill Burton in the office, by the way?

Mr. NUSSBAUM. Yeah, I think I saw Bill Burton that night. I have a vague recollection of seeing Bill Burton that night, too.

Senator GRAMS. Thank you very much, Mr. Nussbaum.

The CHAIRMAN. Thank you.

Senator Sarbanes.

Senator SARBANES. Senator Dodd.

Senator DODD. Mr. Chairman, thank you, Senator Sarbanes. I may not take the entire time necessary, but I went back and I think it's important to highlight the fact that as we try to get people to recall events, and I think it's been stated by most of us here over the last 3 or 4 weeks, I think all of us appreciate the difficult circumstances normally one has recalling what one did 24, 48, 72—a week, a month ago, let alone going back 2 years. And exactly, then, when you add the emotional element of that evening and the days immediately following the suicide of Vince Foster, one could certainly appreciate even further confusion.

I thought it noteworthy, so I went back and looked at Officer O'Neill's testimony about what he saw that evening. Now, he's not so necessarily emotionally involved in the evening unless he knew Mr. Foster. I'm assuming he didn't. But if you go through the deposition and hearing testimony of Officer O'Neill when he was first interviewed by the FBI, and this is about the events as to who went in and out of the office first. I raise it just for the purpose of my colleagues appreciating even someone who has no emotional investment in that evening.

When he's first interviewed by the FBI about the events of July 20 he believes that he said that women accompanied Bernard Nussbaum into the White House Counsel suite shortly after he, O'Neill, opened the suite. At his deposition he said he saw a woman and heard women's voices. At the hearing Officer O'Neill said he saw figures follow Nussbaum but he was unable to remember more than that.

Moreover, he said he saw the figures follow Nussbaum into Nussbaum's office, not Vince Foster's office. Now, not to be unfair to Mr. O'Neill, I think this is how difficult it can be for someone to go back and exactly recall. I just make that notification here so the people can appreciate, we start talking about what Maggie Williams and Patsy Thomasson saw that evening who were involved emotionally and what had occurred. I don't, I wouldn't ever read the slight discrepancies in who went in first, who was in the room and who came out and so forth during a brief period of time.

Mr. Nussbaum, I would like to turn to something else. I happened to have read a speech that you gave or an article you wrote. It was an article that you wrote for the New Jersey Law Journal in December of last year. It goes to a question that I raised here

the last time we talked and that was in the hearings we had a year ago about the distinction that I think there exists. And I realize it's a difficult distinction to make, having read your article, between being Counsel to the President and Counsel to the Presidency.

As I looked at your opening statement on page 35, and there may be other references to it, but just going through various comments and particularly toward your conclusion in those remarks, page 35, I believe that no lawyer, no counsel, let alone Counsel to the President. Next paragraph, a lawyer shouldn't—indeed ethically cannot turn his back on his client because the political media heat will be turned up. Next page, first paragraph, "Shouldn't the President's Counsel be concerned about the political impact." Going further on page 38, last page, first paragraph, "What it comes down to is that the President of the United States is entitled to have a lawyer in the White House who will be unafraid."

I wonder if you might, we talked about this before, but my view of this is where a lot of the difficulty generally comes in, I think, in the minds of a lot of people is being Counsel to the Presidency. This isn't a law firm that's moved into the White House. I gather you go back a number of years ago. One of my colleagues, Senator Bennett and I were chatting a while ago about how things have changed in White House operations over the years and how it was the periods past the President might have one lawyer in the Counsel to the Presidency. Now it's an expanded operation.

I think there is a lot of confusion. I think I share some of it myself as to where do you draw the lines here. Are you representing the First Family in the traditional sense that most people in this country, when they hear about their counsel, they think of it in that context? Or is it institutional representation? How do you make that distinction when you start dealing with matters like this?

Mr. NUSSBAUM. Those are the issues I started talking about in a speech I gave at the——

Senator DODD. You made a speech. I thought it was a good speech and it does get into some detail on this and it's an interesting thought.

Mr. NUSSBAUM. I discussed some of these issues, as you kindly pointed out, in that speech. No, I had a very clear understanding of my role, and I still have a clear understanding of what my role was. I was not the President's personal lawyer. I was Counsel to the President and these are the key words and I think I use them in the speech. I don't have it in front of me right now, I wish I did. I was Counsel to the President in his official capacity, in his official capacity in his role as President, and that means I dealt with things that affect him in his official capacity, and that's what I did.

The things I worked on in the White House all related to events which had an impact on the President in his official capacity. I said earlier to another Senator today there are some things I clearly wouldn't do. I wouldn't handle a will for him. I wouldn't handle a house closing for him. I wouldn't handle, I said earlier, a matrimonial matter for him. I wouldn't handle any of those kind of matters for him. But matters which affect him in the manner we talked about last year or this year did affect him in his personal capacity. I was his lawyer with respect to those matters.

And with respect to those kind of matters in his official capacity there are privileges that apply, executive privilege being a very prominent one. There is attorney-client privilege, there is work product privilege, and there's general rules with respect to confidences. Now, mainly preserving the client's services. This is not a new thing, Senator, there are a lot of Government lawyers who have clients in the Government.

In fact, the Code, the Washington, DC Code, the DC Rules of Professional Conduct actually deal with these issues about what a Government lawyer's obligations are. It talks about, for example, that a Government lawyer has the agency as his client, the agency he's working for. My case, the White House and the President. And with respect to that agency as you represent the agency as it performs its official functions, you have to act like a lawyer acts.

Senator DODD. Let me ask you here, was there any discussion you had with Mr. Heymann that evening that you—he claims an agreement was struck, you say this was merely a discussion about how to deal with it. I mean, here is someone who has worked—Mr. Heymann has worked for the Federal Government on several occasions, I believe, during his professional career. Was there any point in that discussion where you or he had made the point here that it wasn't your job to be necessarily protecting the individual of the President, but rather you were concerned about how the documents were part of the White House were to be handled?

Mr. NUSSBAUM. That is correct. I didn't so much have the discussion with Mr. Heymann, we really didn't have a lengthy discussion on these issues. But I did have a discussion with Mr. Margolis and Mr. Adams, I talked about—not only did I talk about attorney-client privileges and things like that, but I talked about——

The CHAIRMAN. Senator Dodd, if I might, and Senator Dodd suggested a conversation—now you are referring to any possible conversation that you had with Mr. Heymann, you are talking about a conversation that you had during the day, not the one that he recalls making to you but you have no recollection of. I just want to get a time.

Mr. NUSSBAUM. Yes.

The CHAIRMAN. OK.

Mr. NUSSBAUM. The conversation I am referring to, I think, is the conversation I had on July 21 with Adams and Margolis and others.

The CHAIRMAN. Fine.

Mr. NUSSBAUM. That's the conversation which was the most extensive discussion between the Department of Justice and us as to what my role is and what my obligations are, that I had an obligation as the President's Counsel to protect confidential matters, privileged matters, sensitive documents. I also had an institutional role. I was concerned about setting precedents with respect to people, even under Executive Branch people, just willy-nilly walking into a lawyer's office which where all these privileges and confidences and sensitive things do apply. So I was concerned about setting an important precedent for that.

As I said in my statement, I was concerned not only about this President but future Presidents with respect to this issue. Jack

Quinn and I also had a discussion along these lines and that's what he was concerned about.

Senator DODD. I see the red light is on, I want to bring this to a close. Was there any sense of agreement on the part of Mr. Margolis and Mr. Adams about the point you were making?

Mr. NUSSBAUM. No, they understood my position, but they had their own institutional law enforcement responsibilities. And they felt those can be best served if they were at least shown part of the documents in the office as we conducted the search for a suicide note, and I said I would consider that. I did consider it, and by the next day I rejected it.

Senator DODD. Thank you. I have gone beyond my time, Mr. Chairman. I thank you.

The CHAIRMAN. Thank you, Senator.

The CHAIRMAN. It's my intention to wrap this up after Senator Bennett. I would hope we'll start at 9:30 a.m. tomorrow. We lost at least a half hour this morning and, obviously, there will be votes that will interrupt, but I would hope that we would be able to conclude this at a reasonable hour tomorrow.

Senator Bennett.

OPENING COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Thank you, Mr. Chairman.

Mr. Nussbaum, I come from a business background. When a business has a bad quarter the managers of the business usually look around for anything else that might be soft somewhere in the balance sheet and dump it all into the same quarter so that all of the losses get accumulated.

Mr. NUSSBAUM. I'm familiar with that, Senator.

Senator BENNETT. You seem to be the bad quarter here. Everybody seems to want to dump everything into your lap and all of the rest of them walk away saying, well, you have to talk to Bernie about that, I handled it right, just talk to Bernie. So I appreciate you've had a long day and you've handled yourself well, and I congratulate you for that.

Mr. NUSSBAUM. Thank you, sir.

Senator BENNETT. I do have to go over some things, however, that some people left loose ends that somehow got dumped into your quarter.

If we could, I would like Z514 to show up on the Elmo and these are notes where you are named. These are Bill Burton's notes in his handwriting, presumably taken at a meeting of Jim Hamilton, Bernie Nussbaum, Bill Burton, David Gergen, and Mack McLarty. There are two points down there. You see in the bottom of the notes. "Far happier if disc," d-i-s-c, we had a long conversation as to whether that meant "discussion" or "discovery" or "disclosure." And Mr. Burton said, well, I use it to mean all three of those depending on the context and we weren't quite sure of the context. "If someone other than Bernie." And "other" is underlined twice as if whoever was making this decision was being very emphatic that the far happier if the whatever is someone other than Bernie. Then, "If worried about the Usher's Office discuss with me."

Even though these are Mr. Burton's notes, he can't remember who it was that would be happier if it was someone other than you.

He can't remember who "me" is that should be discussed—should be—yeah, discussed in the Usher's Office. Your name is on the note as one of those present at the meeting. Can you help us as to who would be happier if someone other than you discussed or disclosed?

Mr. NUSSBAUM. I'm sorry, Senator, I cannot. I have no idea what these notes refer to.

Senator BENNETT. When you see a mention of the Usher's Office, do you have any idea what that would be?

Mr. NUSSBAUM. Yes, the Usher's Office was mentioned in Vince's handwritten note after it was discovered, I believe. Yes, the Usher's Office plotted to have excessive costs incurred taking advantage of Kaki, who is the decorator, and HRC who is Hillary Clinton. So this would appear to be a discussion that took place after we discovered the note. But other than that, I don't really know what it refers to.

Senator BENNETT. Mr. Burton placed it in a discussion of after the note was found and prior to a press conversation about it. I have assumed, admittedly it's nothing more than an assumption, but I have assumed that in the meeting where the five of you were present there was a discussion as to who would talk to the press about this, and it may have been a casual kind of discussion, but it made enough of an impact on Mr. Burton that he underlined "other" twice. That whoever was talking, be it McLarty or Gergen or whatever, and they said they had absolutely no memory of this at all. Someone made a very strong point to Mr. Burton that he wrote it down, presumably in your presence, that you ought not to be the one to be talking about this. Do you remember any discussion at all as to who would brief the press on the note?

Mr. NUSSBAUM. Well, briefing the press, I remember discussions in the White House after the note was found, and as we were turning it over to law enforcement about the need to publicly disclose the fact that a note was found, that it was important that we get it out. On the other hand, what I do remember is the Justice Department telling us that they did not want that to happen. And since we all in the White House, especially the White House Counsel, wanted to cooperate with the Justice Department in this matter, we did not for a period of time disclose the finding of the note on July 26 which was turned over on July 27.

I remember there was a sense of frustration in the White House that we could not disclose the note because everything leaks and this is going to get out one way or another and it would be better to get it out sooner than later, however sad it was. But nevertheless, we just went along with the Justice Department. I do not remember any discussion with respect to who would talk about the note, the discovery of the note once it was disclosed. Now, it was not normally, I must say, Senator, my role in the White House to meet with the press.

Senator BENNETT. I understand that. That's why——

Mr. NUSSBAUM. Or to make public statements with respect to it. I'm a little sorry, Senator, I'm sorry I didn't do it more when I was there. That's one of the things I regret when I look back. I should have been out front more, talking about my conduct and defending myself, but be that as it may, it did not happen at the time. So

it would not be unusual for somebody to say they wanted someone other than Bernie to talk about the note publicly.

Senator BENNETT. Well, I am intrigued by the double underline of the word "other" and I'm interested that no one can remember this. It apparently was very important at the time because Mr. Burton, a former journalist taking notes in his journalistic style, felt that he could write the word "precedent" and then nothing else. But on this one he's specific enough to write two points, "far happier if" discussion, discovery, disclosure, "if someone other than Bernie," and then "if worried about Usher's Office discuss with me."

It would seem to me that something that's that emphatic that he decides to make note on and now no one can remember what it was about. You said just in your last statement talking about client, attorney-client relations, and privilege that you, for example, would not handle a will or do a house closing or something like that for the President.

Mr. NUSSBAUM. That's correct.

Senator BENNETT. Wasn't that precisely what Vince Foster was doing?

Mr. NUSSBAUM. No. What Vince Foster was doing, he was working on assisting the President and the First Family in performing certain official functions, namely financial disclosure forms, tax returns which are publicly disclosed for a President at least, blind trust. In order to do that, this gets a little tricky and complicated, I understand. In order to do that you need to work with the President's personal files, his financial files, or his investment files.

Senator BENNETT. I understand.

Mr. NUSSBAUM. So you have to be able to do that. But when he was in the White House he was using those personal files for these official functions. It's true, Senator, that prior to becoming Deputy White House Counsel he did, to some extent, act as the President's personal lawyer, I believe, and Mrs. Clinton's personal lawyer earlier. But when he was in the White House it was my understanding, sir, that he was performing solely official functions although he was working with personal files in connection with those functions.

Senator BENNETT. My reading of that is that he was going beyond that. He was designing options for the Clintons to make choices on, and it was interesting that Ms. Tripp, when she testified, testified that she had questioned this activity because she had not seen it before in her prior service in the Bush White House.

Mr. NUSSBAUM. I do not—I do—I'm sorry to interrupt, Senator, please, I just have to say Ms. Tripp, she may have testified like that. I do not ever recall her saying something like that to me. It would be highly unusual for her to walk in to me after—she was only in the office for a few months at that time—to tell me that she thought Vince Foster was spending too much time——

Senator BENNETT. She didn't testify she had mentioned it to you. But she did say she had questioned that. And, of course, on his writing he uses words like "can of worms" and "don't get into that box" that would indicate to me that he was doing something other than preparing disclosure documents.

I simply will make a summary of this whole thing as I see it and ask for your comment on it. As we listen to your associates in the White House Counsel's Office and we listen to your testimony here today that is very carefully crafted, as you would expect a good lawyer to do, the impression is very clear that within the bounds of understandable grief and confusion at the time, everything was done in a proper and almost meticulous kind of fashion, that everybody was trying to do the very best they could under difficult circumstances and everything proceeded in a normal, proper kind of way with the only loose edges being understandable grief and concern and pressure.

That is the picture that comes not only from you but from all of your associates in the White House Counsel's Office and from Ms. Thomasson and others that worked with you, Maggie Williams and so on.

Over here as I have sat through these hearings from the Park Police, both those that were present at the house, those who were involved in the notification, those that showed up at the office, from the Justice Department, those that were present and those that were monitoring it in the Justice Department, the Secret Service people, and the White House support staff, is a very different picture.

It's a picture, again, to draw on the imagery of the support staff of slamming of doors and demanding of typewriters and your grilling, in a firm interrogation, Ms. Gorham of what did you see. It is a picture of a group that is out of control and frantically going in a number of different directions simultaneously. And summarized in that E-mail that I'm sure both of them wish now had, in fact, been erased where one support staff describes it as a "slapstick comedy" and the other responds, "Yeah, the Three Stooges." That's a very different picture that we're getting from people around the circumstance.

I hope you can understand why I find it troubling that it's difficult to mesh the two, and, indeed, the one seems to be so polished as to be almost too polished. Almost too pat compared to the chaos that we seem to get from the others.

Mr. NUSSBAUM. Senator, since you asked for my comment. That's a pretty good summation of both sides, Senator. Let me just say this. You've raised a number of different issues in that last statement, Senator. With respect to this notion that there was chaos and hysteria and paranoia in the White House Counsel's Office which arises according to your little summation from the testimony of two of the secretaries in my office, let me just say that these are very good and decent people, Linda Tripp and Deborah Gorham. This was a difficult time, especially July 26th. That was the day I started to talk about where they started doing these E-mails.

We had discovered on that day, as I've testified, and you've heard this note, this handwritten note. We made a determination that for the time being, Mr. McLarty actually made this determination that for the time being we would keep this closely held until we could inform the President, until we could inform Mrs. Foster, and until it could be done in a proper fashion.

So we were in a tiny little office, fairly small, was not tiny little, but small office and Neuwirth finds it and he and I are in my office

putting it together. Then we're calling Bill Burton into the office who is the representative of the Chief of Staff because McLarty was in Chicago with the President. Hillary Clinton comes into the office for a short time and walks out of the office and we're sort of huddled in this office, in effect, putting the pieces together and discussing this particular issue. And we're keeping it from two people sitting right outside the door of the office. From my secretary, one of my secretaries, Linda Tripp, and keeping it even from Deb Gorham, who was Vince Foster's secretary. Now, they see these comings and goings. We have just been through a traumatic time. Vince is dead. He killed himself. We're all there in grief and they continue to be in grief and they were particularly distraught, particularly Ms. Gorham.

All of a sudden the impression they get is they're being excluded. Something is going on, people are going in and out. Obviously, something is on our mind. We have found this writing and we're going to turn it over to law enforcement, but we're engaged in discussions about it. They don't know what's going on and no one is telling what's going on. I didn't call them into a separate office and say Linda, Deborah, look, we just found this note and we're going to turn it over. I didn't tell them that because Mack wanted to keep the thing closely held until we made the proper decisions.

So here you have two people who have suffered through this crisis with the rest of us and all of a sudden they feel they've been left out. They feel they've been ignored, even though they're part of the family. When I thought about their testimony I realized that I was insensitive. I don't know what more I could have done if I followed Mack's orders with respect to this thing, but they felt, I felt in a sense looking back I was insensitive.

We had suffered through this crisis together. Somebody had died and yet we're not telling them. They hear a door, they hear a slam. Somebody closes a door. They hear it slammed. Somebody comes out and asked for a typewriter, and although I don't remember that and they find that some sort of crazy request. Obviously a typewriter was asked for, it was because the note wants to be typed.

Senator BENNETT. There is a detailed conversation about it.

Mr. NUSSBAUM. So they're sort of feeling left out. They're feeling bad about this thing and they react and they react with speculations about burn bags and things like that. They ask what's going on. They don't know what's going on and they sit there typing these E-mails to each other. Looking back, it's sort of understandable what they did and what they did in part was caused by what we did by sort of keeping them out and leaving them out.

It's something I had to do. It's something I'm sorry about, but it doesn't support the conclusion, it doesn't support the picture that you paint from that testimony of paranoia of, of terrible things going on in our office. I didn't grill Deborah Gorham. I like Deborah Gorham, she's a gentle, sensitive lady. She was in a state of shock during this period, understandably so. Her boss had just killed himself, in effect.

I tried to be as gentle as I could with her, but I think she, remembering back to that terrible period, if I asked her a question two or three times sort of to shake her out of her, she was like she was in shock during that period, for a lot of that period—to sort

of shake her out of that shock a little bit. She finds that conduct of me talking to her grilling. I didn't grill her, I tried to treat her very gently. But looking back, I can understand her testimony here today. But it doesn't support the picture that you're painting.

Nor, sir, when you refer to the Park Police and the Secret Service and all these law enforcement agencies, nor is that a valid summation, Senator Bennett. The fact is our relationship with the Park Police, our relationship with the Secret Service, our relationship with the Department of Justice, our relationship with the FBI was perfectly fine during this period. It changed a little—we had a dispute over how the office search would be conducted, but it was perfectly fine.

What happened, sir, and I alluded to this before, is once the note was found on July 26 and turned over on July 27, people were embarrassed, in effect. Law enforcement became embarrassed because they were present at a search which I conducted, not they conducted. They were present at a search at which a note wasn't found. Because of that, Senator, then certain of them at least started feeling aggrieved about prior conduct. So I don't think even their testimony paints a picture of any improper conduct on the part of the White House.

Forgive me, Senator, for that very, very long answer.

Senator BENNETT. My time is gone. I would like at some point to follow up on some of these issues.

The CHAIRMAN. Well, Senator, we'll be back tomorrow morning, and I will recognize you first so that we can again follow up on these issues.

Senator BOXER. May I ask a question?

The CHAIRMAN. Yes.

OPENING COMMENTS OF SENATOR BARBARA BOXER

Senator BOXER. I think that I am not going to get a chance to question today, mostly for my fault. I could only stay for 3 hours. Why are we going back to Senator Bennett—on your time?

The CHAIRMAN. When it comes to our side, of course.

Senator BOXER. Great.

The CHAIRMAN. Of course, we have rotated continually. We will continue to do that. But I'm delighted that you are watching so carefully.

Senator BOXER. I am.

The CHAIRMAN. Well, I understand that.

Senator BOXER. Every move.

The CHAIRMAN. We will obviously start with this side. I want to thank Mr. Nussbaum and I hope that we can finish tomorrow, but if we can't, then unfortunately we'll go Friday. But I think if we all work together we will be able to finish tomorrow. All right.

Mr. NUSSBAUM. I want to assure you I have no opening statement tomorrow.

The CHAIRMAN. You did an excellent job and I want you to know that this Senator has no problem with your opening statement whatsoever. I think you owe it to yourself and you owe it to all of us to put into the record, in a thorough, comprehensive manner, what you did, and I think some points were very important factually to get out.

So I want to commend you for that. I certainly don't mean to suggest that you shouldn't tell the Committee what you think is important, but I think if we all work together we can conclude this part of our review tomorrow.

So we stand in recess until tomorrow at 9:30 a.m.

[Whereupon, at 5:30 p.m., the hearing was adjourned, to reconvene at 9:30 a.m., on Thursday, August 10, 1995.]

[Prepared statement and appendix supplied for the record follow:]

PREPARED STATEMENT OF SENATOR PATTY MURRAY

Mr. Chairman, I want to commend your leadership and diligence in the hearings we have held over the last 4 weeks. I believe, for the most part, these hearings have cleared up the mystery of what happened to the documents in Vincent Foster's office on the days following his suicide.

When we started these hearings, I urged my colleagues to keep perspective; to not get caught up in the far-flung conspiracy theories swirling around Vince Foster's suicide; and to rely on the time-honored values of fairness and common sense.

With this in mind, we heard testimony from dozens of witnesses. We heard how a group of distraught, grief-stricken White House staffers struggled to make decisions, that in hindsight, we might question. For example, in reference to her handling of the Clintons' personal files, we heard the First Lady's Chief of Staff Maggie Williams lament, "It's not the best decision I've ever made in my life."

Certainly, many decisions made immediately following Vince Foster's suicide appear to have lacked good common sense and were probably not the best decisions. But, we have learned a few essential points to keep in mind.

First, there was no clear line of communication between the Park Police, Secret Service, and the White House about closing Vince Foster's office on the night of July 20, 1993.

Second, the law enforcement officials neither had a right to look at the files in Vince Foster's office nor wanted to see all of the files in his office in order to complete their investigation of the Foster suicide.

Third, the White House Counsel had to balance the Foster family's right to privacy, executive privilege, and attorney-client privilege with the Park Police obligation to conclude the investigation.

Fourth, the law enforcement officials ultimately were able to examine everything they were interested in seeing in order to complete their investigation of the Foster suicide.

And fifth, the White House broke no laws, nor violated any standard of ethics in this regard.

Mr. Chairman, we also learned that 2 years later recollections differ. People differ on who said what to whom, and when; and who saw what, and when. But, none of the differing recollections raise a significant amount inconsistency. The differences are not so great that this Committee cannot piece together the events that happened in the days following Vince Foster's suicide.

Finally, I believe we learned that there was no effort to hide or conceal White-water documents. There was no conspiracy; no late-night White House scandal, no effort to hide the truth. There was simply poor-decisionmaking by a staff that was not prepared to perform effectively in a time of great stress, sadness, and pain.

Mr. Chairman, for the sake of this country, the Foster family, and this Committee, I hope we will be able to put the events surrounding the Foster suicide behind us. Two years have passed. The FBI has investigated these events, a Special Prosecutor has investigated these events, and this Committee has consumed itself with this issue. Nothing has ever turned up. It's time to move on to the issues that the American people really care about; welfare reform, Medicare, and the budget deficit.

Thank you, Mr. Chairman.

NUSSBAUM DEFENDS CONDUCT AS COUNSEL

AMERICAN LAWYER NEWSPAPERS GROUP, INC., NEW JERSEY LAW JOURNAL

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BY BERNARD NUSSBAUM

In New York Bernard Nussbaum made his name as a high-energy, white-collar litigator adept at coping with crises. In Washington, Nussbaum is known as the White House Counsel who was consumed by crises—so much so that he felt compelled to resign his job barely more than a year after assuming office.

So it is perhaps no surprise that Nussbaum chose the comparative warmth of his native New York as the place to speak out publicly on his troubled tenure in the Nation's capital. In a November 15 address delivered to the Association of the Bar of the City of New York, Nussbaum defended his conduct as counsel—especially his handling of sensitive materials in the aftermath of colleague Vincent Foster Jr.'s suicide, and his decision to meet with Treasury Department officials about the White-water affair.

Nussbaum, now a partner with Wachtell, Lipton, Rosen & Katz in New York, says that if he had it to do over again, he would handle the matters the same way. What follows are excerpts from his November 15 address.

I spent 30 years practicing law in New York, and no one outside of this town, perhaps this room, ever heard of me. I spent a little over a year in Washington, and, for a short time, I was known from coast to coast.

Now that I am back in New York, I realize that Andy Warhol was right; Anyone can be famous for 15 minutes. What Warhol did not explain—but what I now know—is that 15 minutes is plenty. I should have known there was some risk in going to Washington. After years of building a career, I let my practice shrink to one client. After years of working in fancy office buildings, I started working out of my client's house.

And a New Yorker, above all, should have been wary of accepting a job from someone who has bodyguards following him everywhere. But it was an offer I could not refuse.

I did learn a lot in Washington. If you learn from your mistakes, then even The New York Times must find me quite wise by now. Some of those lessons were on rather odd subjects—how nannies should be paid, why a haircut is sometimes a bad idea, and when not to change travel agents.

But in hindsight, I think that many of the strange events of my year in Washington fit into a bigger picture. They illuminate, for better and worse, the times in which we are living. For that reason, I would like to talk a bit about my own experience as Counsel to the President and reflect upon some broader issues raised by that experience.

My first job almost 2 years ago was to participate in a transition from a Republican Administration to a Democratic Administration, after the Democrats had been out of executive power for so many years. It was not easy, and, to some extent, the transition is still going on.

In view of [the November 8] election results, it may well be that by the time this transition ends, another one will begin. But I would not bet on it—life has a way of playing strange tricks on us all. Republicans as well as Democrats. If he were alive, you could ask a former distinguished member of our bar—Tom Dewey. In any event, to envision what it was like 2 years ago—and what it may be like 2 years from now—imagine entering your law firm one day in November. Imagine being told that by mid-January everyone and everything would be gone—every partner, associate, paralegal, secretary, messenger, every meaningful file. But you had to see to it that the firm would be fully operational, that it be prepared to handle crisis matters on a daily basis, with an entirely new team, both of professionals and support staff.

This is what happens, but only on a more significant scale, when there is a change of political party in the White House. Obviously, it is important to the national interest for the transition to be as efficient and effective as possible. There were bumps along the way. But, overall, it worked fairly well.

An Excellent Little Law Firm

Indeed, in the space of a few months, we created in the White House an excellent little law firm of a dozen lawyers. We did it the old-fashioned way, by attracting very good people. . . . Apart from the appointments process, the Counsel's Office was consulted by the President and other members of the White House staff on the legal and constitutional implications raised by a host of issues: From gays in the military, to NAFTA, to the siege at Waco, to child pornography laws, to civil rights,

to the crime legislation, to lobbying reform, to the health-care initiative, to actions respecting Iraq, Somalia, Haiti, Bosnia, Cuba.

The reality is that today, at the highest levels of Government, as in business, there are very few things you can do without consulting your lawyer somewhere along the line.

But for one little law firm it was, as you can see, a full plate. There was a lot of business. It was an exhilarating time. Now I know that the matters I just mentioned are not necessarily the things I am best known for. Other items provoked far more coverage in the press—particularly, the review and handling of files in my deputy's office after his death, and certain meetings I had with Treasury officials arising out of the Whitewater matter.

Ultimately, they resulted in the controversy which led to my coming home.

I testified about some of these matters before Senate and House Committees for many hours, in one case until about 2:00 in the morning. If you did not watch as I competed with Jay Leno and David Letterman for the late-night audience, you probably do not want to be kept that late here. So I will spare you the details of that testimony.

Besides, a full account of my appearance before the two Committees would shock many of you—you would learn that, for once, I did not do most of the talking.

But I do want to spend a little time telling you about the matter which caused such controversy. I want to do so not simply to tell war stories, or defend my honor. I want to do so because I believe my experiences are emblematic of a problem that is much larger than the problems of one man.

Fundamental Misunderstanding

That larger problem is the following: The media—and, as a result, the public—seem to be laboring under a rather fundamental misunderstanding of the role of the President's counsel. The principal source of that misunderstanding, I think, is the failure to appreciate something that one might have thought obvious; the fact that the President's lawyer is a lawyer, and that every lawyer—even one representing the President in his official capacity—has an obligation to represent his client faithfully and zealously.

But it is not simply a misunderstanding. What I want to suggest tonight is that my critics (in general) and some in the media (in particular) have it exactly backward: The problem is not that lawyers who are in the public arena are too zealous in representing their clients; it is that they—and others in the public arena—are often not zealous enough, because of a fear of appearances, of negative publicity and, consequently, of unpopularity, of loss of position.

I will reflect on this a little later on. Right now, let me describe an experience which generated a barrage of criticism, but which goes to the role of a lawyer in the White House—what I did after the tragic death of my deputy, Vincent Foster. When Vince Foster committed suicide, we at the White House lost a fine lawyer and a magnificent human being. He was the co-senior partner of that little law firm we created, and it's hard to imagine having a better one. All who knew him will always miss him.

Soon after Vince's death, I was quickly required to make a judgment about whether it was proper to permit law-enforcement officials to conduct an unbounded search of Vince's office. If I did nothing regarding access to files in his office, it would have avoided controversy. But it would also have meant abdicating my duty as a lawyer and my obligation to protect the interests of the executive branch.

There were official and personal files in Mr. Foster's office. Some were quite sensitive, such as a list of potential Supreme Court nominees and others dealing with sensitive governmental matters. It was my job to make sure that these documents were dealt with in a sensible, balanced way that did not waive privilege and compromise security concerns on a wholesale basis.

The steps we took were to ensure sensible and balanced access to the files in Foster's office. We sought to preserve the ability of the White House to claim privilege and to express other concerns with respect to sensitive materials, although such claims were ultimately never exercised. And we sought to meet the legitimate interests of law-enforcement agencies, which were then searching primarily for a suicide note or an extortion threat.

What did we do? On the night of Vince's death, I and two others spent a very brief period of time in Mr. Foster's office looking to see if he had left a suicide note. We found none and we left. I removed nothing, nor to my knowledge did anyone else. The charge has been repeatedly made—as recently as 2 weeks ago in an advertisement in the New York Post—that I and others in the White House removed documents from Mr. Foster's office on the night of his death. That charge is, plain and simple, a lie. On July 22, less than 48 hours after Vince's death, in the presence

of law-enforcement investigators, I reviewed the files and documents in Foster's office. I described the files to the investigators, to enable them to decide whether to ask for any particular documents. The investigators did ask for certain ones; all of them were turned over within a short period of time.

Also on July 22, I gave the personal papers of Mr. Foster and the Foster family to an attorney for the family who was present at the review. The transfer of the papers was made in the presence of the investigators. I told the investigators to talk to Foster's family lawyer about any of his personal documents they wished to review. The investigators did later ask to see personal documents and they were shown them.

After the document review on July 22, I arranged to send the personal files of the President in Mr. Foster's office to the President's personal lawyers. They included certain files of the President and the First Lady relating to their Whitewater real-estate investment.

This decision, to send files to the President's personal lawyer, has generated great controversy. It has been repeatedly insinuated that this was done because of some deep concern with the Whitewater matter. The truth is, that in July 1993, when these files were transferred, I could not have told you what Whitewater was. It was not until months later that the White House was informed that an investigation involving Whitewater was being conducted by the Resolution Trust Corp.

The evidence set out in the Independent Counsel's report on Mr. Foster's suicide makes it clear that in July 1993, Whitewater was not on anyone's mind in the White House, including Mr. Foster's. Whitewater was not mentioned in Mr. Foster's now famous, poignant torn-up writing, that was found in the bottom of his briefcase during this period and turned over to law-enforcement authorities. Mr. Foster did list a number of things which were bothering him. Whitewater was not one of them.

But opponents of the President continue to ignore these facts. They ignore them because they are inconsistent with their misguided and malicious conspiracy theories.

Why were files transferred to the President's personal lawyers in July 1993? They were transferred because, like the documents I handed to Foster's lawyers, they were personal in nature. They involved investments, personal, financial matters, and the like. They were used by Mr. Foster in the White House Counsel's Office to assist the First Family in completing financial-disclosure statements, filing tax returns, and creating a blind trust.

The work on these projects was complete. With the death of Mr. Foster and the official reason for our office possessing such personal files at an end, no one in the White House Counsel's Office would be working on these matters, or using these files. After a lawyer's death, a client's files in a lawyer's office belong to the client. That is what I have been taught to believe. The personal files in Foster's office belonged to the President and First Lady. And so they were sent on to the First Family, which promptly transferred them to its personal counsel. When the Whitewater matter did erupt in the press 5 months later, every request of the Department of Justice or the Independent Counsel for documents was honored. The President voluntarily made his personal files relating to this issue available to investigating authorities.

Nothing was done to prevent any document from subsequently being turned over to law-enforcement authorities, or from being subject to appropriate legal process. The documents were preserved, as was the right to claim privilege. That right, as I said, was never exercised.

Looking back, if I had to do it all over again, I would act in the same way. I was required to make a prompt judgment and I sought to balance various, legitimate interests in a sensible manner. This is the way I believe a lawyer is supposed to act. But what an outcry resulted!

An outcry also resulted from the fact that months later I attended certain meetings with Treasury officials arising out of the Whitewater matter.

At these meetings we were told that the RTC staff was referring an investigation about an Arkansas savings-and-loan association to the Justice Department; that the President and First Lady were mentioned, but only as potential witnesses; and that it was certain that there would be leaks about this investigation. Within a day or two, this prediction about leaks came true. These meetings with Treasury officials were held to help the White House respond accurately and fully to press inquiries about this investigation.

The Target of Opponents

The inescapable reality is that a President is much more likely than anyone else to be the subject of leaks. He is the focus of overwhelming media attention. He is the target of opponents who feel no hesitancy in misusing or distorting leaked infor-

mation in an effort to discredit him. And, of course, he is required to continue to act, at the same time, at home and abroad, as this Nation's Chief Executive Officer and Commander in Chief.

I believed then, and I believe now, that it is proper for the President's Counsel to help the President prepare himself to respond accurately and promptly to press inquiries in such a circumstance and to defend the President against misinformation and disinformation.

It goes without saying that it is not a proper White House function to direct, or in any way interfere with, the outcome of an investigation. That would be manifestly improper. That did not happen.

The final item of controversy arose when a top Treasury official told me, early this year, that he might recuse himself from the Whitewater matter—even though he had been advised that he had no legal or ethical duty to do so. I responded that he should carefully consider—in consultation with ethics officers—the appropriateness of such an action.

At the time the Treasury official spoke to me, certain Members of the Senate Banking Committee were pressuring Administration nominees to recuse themselves from anything to do with Whitewater, even if there was no legal or ethical basis for doing so. They were holding up nominations to get their way. The Administration was resisting such efforts for blanket refusal. For me, an important principle was at stake here, as well as a matter of Administration policy. As Counsel to the President, I was entitled to, indeed I believed I was obligated to, support that principle and that policy.

I believed then—and I believe now—that public officials do not have the option of avoiding their responsibilities simply because they are difficult, or inconvenient, or because the officials find it personally or publicly expedient to step aside. Whether they be judges, or legislators, or high executive branch officers, public officials have a duty to do their duty, to call them as they see them, without regard to political pressure or media heat.

This also turned out to be the view of the nonpartisan Office of Government Ethics when the facts were reviewed.

How Things Look

Nevertheless, I learned that this is a controversial notion in Washington and in the media. There, the talisman, the pious concern, is not so much for duty or propriety—but for how things appear, or can be made to appear. The now famous “appearance of impropriety” standard places the ultimate emphasis on how things look, or again, more precisely, how they can be made to look.

For too many, the resulting lesson is to shy away from doing anything which someone may later claim looks improper—regardless of whether or not it is improper. Fear of appearing to do wrong prevents too many in Washington from doing what is right. That is a prescription for weakness and paralysis. This recent emphasis on the “appearance” of conduct, rather than the substance of conduct, was the subject of a powerful critical essay not too long ago, in the *Stanford Law Review*. That essay contained an apt quotation from Henry Fielding's marvelous work, *The History of Tom Jones*, which goes as follows:

The most formal Appearance of Virtue, when it is only an Appearance, may . . . seem to be rather less commendable than Virtue itself . . . but it will however be always more commended.

All of which leads me to reflect on the role of Counsel to the President in the 1990's.

Many of us in this room have served as counsel to a president. Maybe not the President of the United States, but of other institutions: corporations, businesses, banks, universities, bar associations. To be sure, there are important differences between representing the President of the United States and representing anyone else. Yet, if a Counsel to the President is forced to diverge too far from the role of a lawyer generally, we will have weakened both the Office of Counsel and the Office of President. And we will not have served our country.

It became fashionable, at the time of my resignation, to assert that the Counsel to the President is really, Counsel to the Presidency—that I should have dedicated myself to the office, to the institution, to the White House, rather than the person. In part, I understand that view. My role did include defending the institutional interests of all Presidents—even Republicans. And I agree that there are some purely personal matters that should be handled by a private attorney. For example, I never drafted the President's will—which was quite fortunate for him. But I also know that the Counsel's responsibility to the institution of the Presidency begins with advising the particular individual in that office. You do not give advice to a building or an office. You can only advise its current occupant, who is a human being.

An Ethical Duty

And that human being—in his or her official capacity—is the client to whom you are bound by an ethical duty. And that duty includes the duty to preserve his confidences; to represent him zealously; and to help him achieve his legitimate objectives. These are duties that a lawyer has in representing any client. They cannot be compromised because the client happens to be President of the United States. To be sure, the White House Counsel cannot represent the President's personal interests when they may conflict with the legitimate functions of the Presidency, or when they are entirely unrelated to his serving as President.

But most issues do affect and are related to the President in his official capacity. Such issues certainly include the confidentiality of documents potentially subject to privilege; the potential impact of a misleading public disclosure of a criminal referral; and whether executive branch officials can recuse themselves willy-nilly when there is no legal or ethical obligation to do so.

In these situations, the Counsel to the President has every right, indeed has the duty, to act in furtherance of the President's interests.

Most important, no lawyer, no counsel—let alone Counsel to the President—should shrink from that duty to protect his own image or standing. A lawyer should not—indeed, he ethically cannot—turn his back on his client because the political or media heat will be turned up; because someone with an axe to grind, or papers to sell, may attempt to make proper conduct appear improper.

The President of the United States, acting in his official capacity, is entitled to have a lawyer in the White House who will give him candid, unrestrained, and confidential advice, who will act to help him achieve his legitimate objectives as President. Such a counsel will contribute far more to his client and to the country, than one who is paralyzed by an overwhelming concern for appearances.

As I argue for letting counsel be counsel, I am well aware—believe me I am well aware—that we live in a particularly cynical age. I also recognize there is always a risk of wrongdoing in high places. To protect us, we have an array of law-enforcement tools, and Congressional hearings, and a free press. Each of these plays a critical role in protecting our Nation from corruption at every level of our Government. Especially a responsible press.

But there is also a risk, and it becomes greater each day, that cynicism and sensationalism will undermine our system of Government. We have fewer and feebler protections against the risk that our trust in our leaders will be eroded—not by real scandal, but by wave after wave of unproven, sensationalized allegations. Yet if we grow to trust no one, representative democracy will no longer be possible.

Our political life has been immeasurably coarsened in recent years. In these days of "Hard Copy" and *The American Spectator*, there is no story too bizarre, or thinly researched, that it cannot appear as part of our national news, that it cannot be piped into our homes each evening. And our established news outlets, as they compete for a place in the sun in a world of hundreds of cable channels, are increasingly taking their tone and their stories from the fringes of our national media.

Harper's magazine just last month ran an analysis of *The New York Times'* coverage of Whitewater. It is called "Fool for Scandal: How the Times got Whitewater Wrong." I commend it to you. The core of the article is reflected by this passage:

Absent the near-talismanic role of *The New York Times* in American journalism, the whole complex of allegations and suspicions subsumed under the word "Whitewater" might never have made it to the front page, much less come to dominate the national political dialogue for months at a time. It is all the more disturbing, then, that most of the insinuations in the Times' reporting are either highly implausible or demonstrably false.

I will not recite for you the article's detailed rebuttal of the Whitewater charges made in the press against the President. But I will quote its apt conclusion:

In the post-Watergate, post-everythinggate culture, no reporter wishes to appear insufficiently prosecutorial—particularly not when the suspects are the President and his wife. By definition they've got to be guilty of something; it may as well be Whitewater.

Now, some of you may respond to such criticism of media excesses by quoting back to me Thomas Jefferson, who began his career by deifying the press. As many of you know, Jefferson said:

Were it left for me to decide whether we should have a Government without newspapers or newspapers without a Government, I should not hesitate a moment to prefer [newspapers].

What most of us forget is that Jefferson ended his career, after being President, by snarling:

A man who never looks into a newspaper is better informed than he who reads them; inasmuch as he who knows nothing is nearer to truth than he whose mind is filled with falsehoods and errors.

Now, you have to admit, he sounds even angrier than I do, I guess it was tough in Washington in those days also.

No Magic Bullet

I have no magic bullet to kill the kind of cynicism that exists today. But I do have one suggestion that I know will be considered crazy, but is not. My notion is that Washington needs more good lawyers, not fewer. My idea is that public servants generally should hew more closely to the ideals of our profession.

We lawyers know and accept that our jobs may include bad press and conflict. We are familiar with the concept that you must do your duty to your client, even in the face of widespread disapproval.

When we are at our best, we know what it means to be steadfast in difficult circumstances—to be principled, consistent, and strong.

That is too often missing in public life. It needs to be retrieved. And I believe in the long term—even the medium term—it not only makes for the best Government, it makes for the best politics.

Before I sit down, I should take my own advice, and be noncynical, and express my positive feelings for my year as Counsel to the President. I was deeply honored to serve my country and the President. I will always be grateful to him for the opportunity he gave me. And, as I said earlier, I am proud of our achievements, of how I served. I am in some ways just as proud of how I left, because at all times I did my duty as I saw it—at all times I called them as I saw them.

To those still in the Administration, I wish the best. As a tribute and as a challenge to them, in these difficult days—and to all those who enter this or any other Administration—I would invoke the words of Teddy Roosevelt:

The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood, who knows the great enthusiasms, the great devotions, and spends himself in a worthy cause; who at best, if he wins, knows the thrills of high achievement and, if he fails, at least fails daring greatly, so that his place shall never be with those cold and timid souls who know neither victory nor defeat.

Well, I have now known a little of both.

APPENDIX

Lerl Stone Wilson Jones	for Secretary	Jim Hamilton Bernie Hudson Bill Borton David Gergen Mack McCarty
----------------------------	---------------	--

Precedent →

Zpts → for happier if disc.
 if someone other than Bernie →
 if winning is not in the office →
 decision w/no.

Z000139

The park police called and Bill was on the phone with them. Dee Dee and David were in Mack's office too. I realized somewhere in the conversation, which I was hearing from one side, that there was no note found in the car. As a matter of fact, I think Bill asked the policeman.

I then asked the three of them if anyone had made sure that the trash had not been dumped in Vince's office. At that point Bill said we should get Bernie and lock the office. I am uncertain what time that was, but probably after 10pm. I don't remember who told Bernie, but he went up and locked the office.

During the evening, I don't recall anyone wondering around, especially on the second floor. As a matter of fact, I came upstairs to gather work to do while I was going to sit in Mack's office and was a bit spooked by the fact that I was all alone.

I said, I guess we should make sure the trash had not been dumped, and Bill agreed. I asked the cleaning ladies on the first floor and they said they had already dumped the trash. So I asked them where it was and they took me up to the second floor

In the late afternoon of Wednesday, July 21, we met in the office of White House Counsel Bernard Nussbaum with Mr. Nussbaum, Steve Neuwirth and Cliff Sloan of his staff, and representatives of the FBI and Park Police to go over the ground rules for a search of Mr. Foster's office. All agreed that because of the hour the search would not begin until the next day. At that point the Secret Service had stationed an agent by the door to Mr. Foster's office and a Secret Service agent who was at the meeting announced that a special lock would be placed on the door and that he personally would hold the key to secure it overnight. However, Mr. Nussbaum stated that he had already conducted a quick search of the "top of the desk" the previous evening to see if he could find a note. Moreover, other persons in the Counsel's office had entered the office during early morning business hours. Specifically, Mr. Nussbaum had allowed a secretary to enter the office to "straighten up" the top of the desk, and cleaning personnel had entered to empty a waste basket. Mr. Nussbaum or someone else in the Counsel's Office noticed the basket being removed and had retrieved the contents. They were in a plastic bag in the office.

At the Wednesday meeting there was agreement that the Justice Department attorneys would look at each document or at least each file to determine if it contained privileged material, in which case it would not be examined by the Park Police or FBI. We would not read the documents or make notes, but merely examine them long enough to determine if they were covered by the attorney-client privilege or possibly executive privilege. As an example of the clarity of this agreement, Mr. Neuwirth at one point, apparently trying to summarize it, said that "Bernie would look at each document and determine privilege. If he determined no privilege, it could be shown to the law enforcement officers." He was immediately corrected and Mr. Nussbaum agreed that the Justice Department representatives would see the documents to determine privilege. The next morning, however, Mr. Nussbaum had changed his mind and said he would look at the documents and decide privilege issues himself. The Justice Department attorneys pointed out that that was inconsistent with the previous day's agreement and would cause problems. We stated that the Counsel's Office would be better off to allow the Department attorneys to decide or at least help decide, privilege issues, because that would allow the White House to say that the issue was considered independently. Moreover, we stated that we had been asked to undertake this particular assignment at the White House in part because we had reputations of not talking to the press or "leaking." Mr. Nussbaum did not immediately begin the search but waited for about two and one half hours -- during which time he said he was considering whether to allow us to see the documents -- before deciding that only he and Associate Counsels Neuwirth and Sloan would see the documents.

During the search, Messrs. Nussbaum, Neuwirth, and Sloan stayed behind Mr. Foster's desk and examined documents pulled from the desk, nearby credenzas, and a briefcase. No other persons actually saw the documents. At one point during the search, Mr.

Sloan stated to an FBI agent who was standing: "You're not standing to get a look at the documents are you?" The agent indicated he was not, but sat down. In the particular setting, the remark was (to put it charitably) extremely offensive.

During the search, documents were removed from a briefcase. As with documents taken from the desk and credenzas, Mr. Nussbaum glanced at them quickly and made comments such as "these are privileged, they're things we're working on in the office," or "this has to do with something he was working on for the President," or "this is personal." We were not able to see the briefcase to see exactly what was in it. By the same token, we could not see the drawers to see if all material had been accounted for in them.

We asked to have the computer in Mr. Foster's office turned on. Mr. Nussbaum said he did not know how to do so and, in any event, he would not do so in our presence in case there were privileged documents on the computer. He said he would have a staff member examine the contents of the computer after we left. (Press reports in morning newspapers of that day had stated, without attribution, that no suicide note had been found on his computer.)

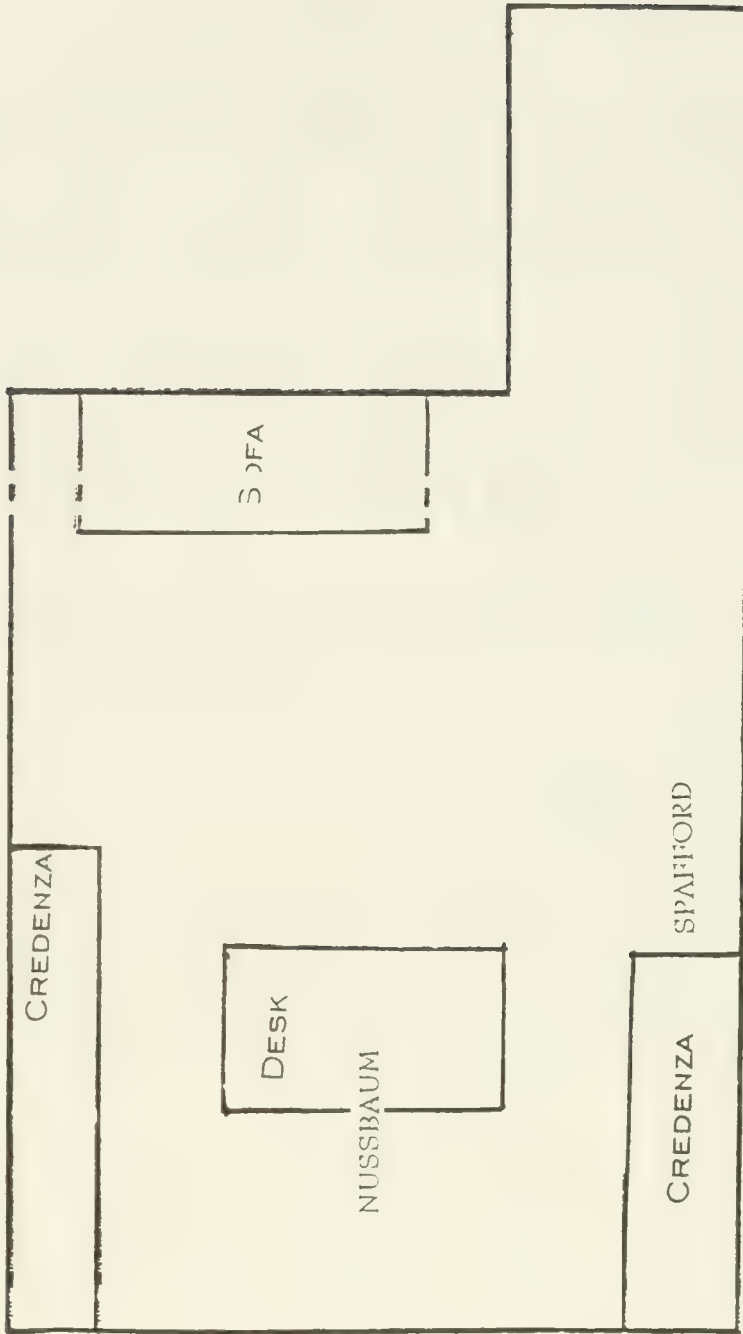
The Washington Post subsequently reported on Friday, July 23, that the search by Mr. Nussbaum had been "under the supervision" of Justice Department lawyers. It is extremely likely that the White House provided this characterization of the search.

I am not sure of the exact days involved, but there was a delay of almost 24 hours between the time a note was found torn up in the bottom of the brief case and notification of the Department.

On approximately July 28, 1993, we were informed by Thomas Collier, Chief of Staff to Secretary of the Interior Bruce Babbitt, that he had called the office of David Gergen at the White House to express concern over White House lack of cooperation with the Park Police investigation. He ultimately spoke to two persons, a Mr. Burton, and Roy [Neal] or [Neill], both of whom took a very aggressive tone and stated that any foul-up in the investigation was the fault of the Park Police, not the White House.

F 000150

OFFICE OF VINCENT FOSTER



(C) Typed
Diary
Notes of Monaco
Vince Foster's Death.

(tab 22)

REDACTED -
NONRESPONSIVE

This morning the Department of Commerce person Collier came in and said that he wanted to pull the Park Police out of it. Phil had a meeting. Phil spoke with me, David, and Roger and in the presence of David, Roger and me called over to the White House in the morning and told them he wanted a "vigorous investigation" and that the Park Police would do it with the FBI.

REDACTED - NONRESPONSIVE

On Tuesday July 20, the White House announced the pick in the Rose Garden of the new FBI Director. Phil, the Attorney General, and Dave Margolis were there. On Tuesday afternoon, Vince Foster left the White House and killed himself. He shot himself in the head in a park.

On Wednesday, the White House realized that someone would have to come and take a look at the records in Vince Foster's office as part of a preliminary inquiry to rule out — for suicide. Phil Heymann and Janet Reno decided that Roger Adams would go. Roger suggested that maybe there was a problem because he had worked at the White House for several months.

During this period of time, the Attorney General made a big deal about getting a hold of Phil while he was speaking at the Marriott while he was speaking at a Youth Violence Symposium. In any event, it was decided that Dave Margolis and Roger Adams would go over to the White House. David and Roger did go over. I believe it was on Wednesday briefly just to put a yellow tape on the door with the Park Police in the regular course of business. They determined at that time that they would come back and search the office the next day.

The next day was a disaster. I first realized there was a problem when I saw Phil Heymann on the phone with Bernie Nussbaum. I walked into the conference room and sat down. This was probably about 10:30 or 11 in the morning when he should have been in the Crime Bill pre-meeting in room 4118. Phil was on the phone with Bernie Nussbaum and he said: "You are messing this up very badly. I think you are making a terrible mistake." And what I took it to mean, in the context of the general conversation was that Bernie had refused to let David and Roger take a look at the documents.

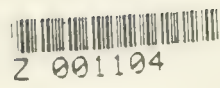
I later heard from David that in fact what had happened was that Bernie looked at the documents and told him that a privilege was asserted or was not asserted. This was in contrast to what Phil and Bernie had decided the day before. Only I and Phil were present.

Phil and Bernie seemed to be in agreement on the entire thing but

F 000166

July 22, 1903

REDACTED



First Family - SF 278

First Family - 1994 Income Tax
Returns

First Family - General

HRC - CLE/Arkansas Law
License

First Couple - Blind Trust

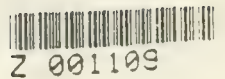
First Family - Arkansas Home

POTUS - Arkansas Office

WJC - Passport

WJC - Papers

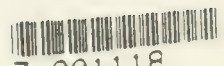
First Family - SF278 pre-POTUS



1320

July 22, 1993

REDACTED


Z 001118

First Family - SF 278

First Family - 1994 Income Tax Returns

First Family - General

HRC - CLE/Arkansas Law License

First Couple - Blind Trust

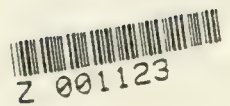
First Family - Arkansas Home

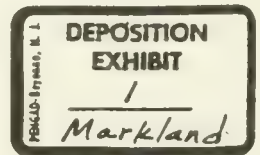
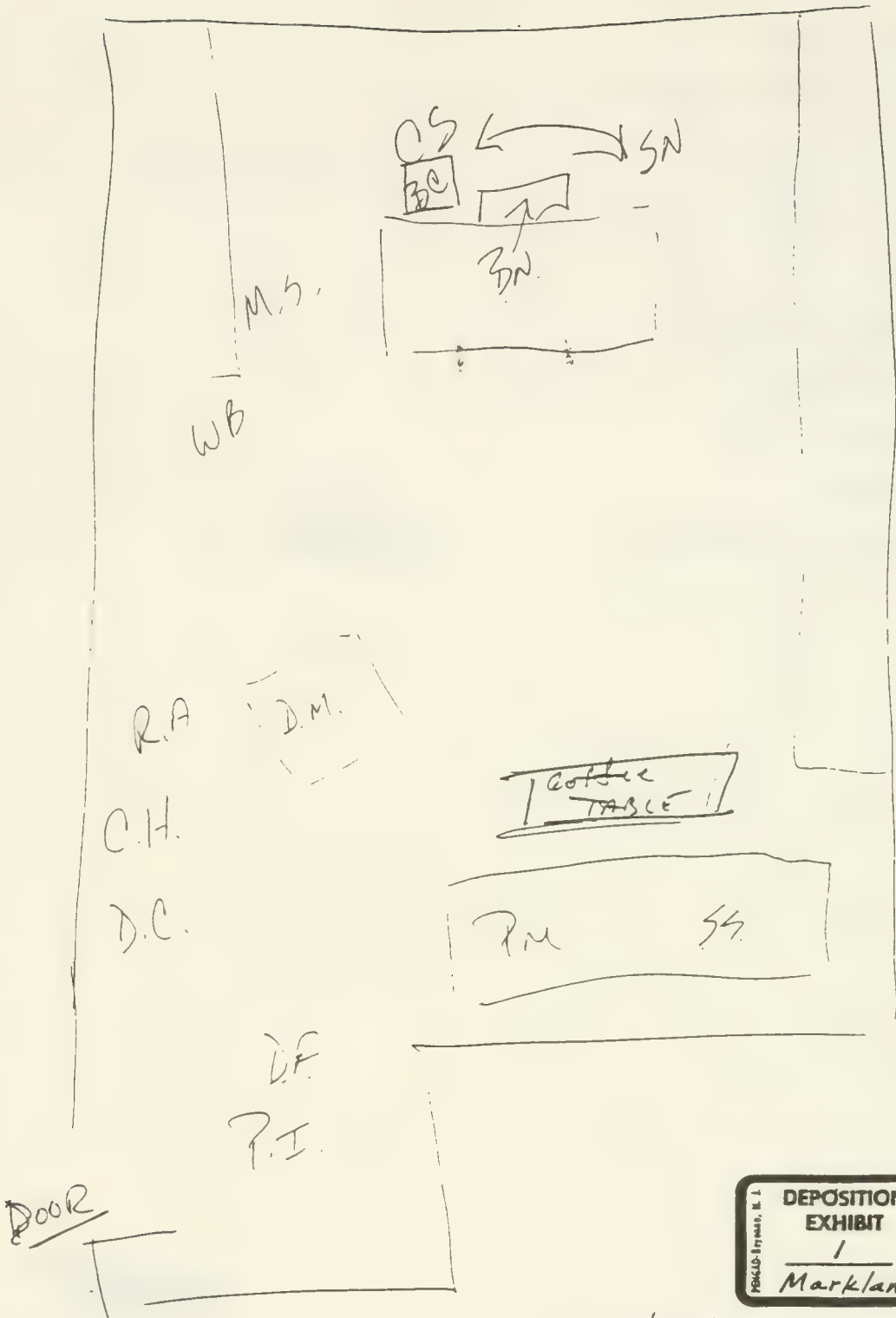
POTUS - Arkansas Office

WJC - Passport

WJC - Papers

First Family - SF278 pre-POTUS





Markland 1 1 1

July (15)

Tues 20

Foster suicide

Found 9:00 P.M.

Wed 21

PH → RA stand by to watch
search of Foster documents

same PH has
had BN at suggestion

RA → PH my role in WH
Counsel's ofc might be a problem

AG → RA is there a problem

PH → RA 3:00 no problem

'anything to
do with his visit
with'

PH · RA · DM look at the
documents -- be satisfied by looking
at first page

met with Capt Charles

Here -- set up procedure to

check for relevance and sensitive

privilege

waiting for
call from
Park Police

DM → PH I want FBI in

PH → CH bring in FBI

CH they're in

→ 5:00

agents, park police, DM, RA, the
Newirth all in Bernie's ofc

-- agree to come back the next
morning -- will use the

system we've agreed on

BN agrees

SAV says "no"

DM says it's a done deal

BN agrees

Park Police not
allowed into the
fire which is
not

F 003150

return and brief PH

"give them to family lawyer
and get them out of BN's hands"

9:00

PH → BN -- "you ~~annoyed~~
me" -- BN → PH we're not
hiding anything

Fri 27

DOJ out of it -- info
from Park Police

Tue 27

BN: wanted me to

Tues 29

A.F.C. -- 5:15 go to Wt.
rode over with A.G.

Bennie reads note

A.G. said turn it over

called Park Police (Wt.)

BN → PH stay

BN assembled notes and
read it aloud
rode back with P.P. line

Wed 28

we call FBI -- want an
aggressive investigation.

Thurs 29

Collier calls 8:25 -- wants
shortly thereafter

F 000163

Wt. tracing, P.P. line info.
DOJ

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

THURSDAY, AUGUST 10, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE THE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 10:30 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

Mr. Nussbaum, again, we ran into the situation of Senate votes. I think we had four votes and then final passage and that's why we are here at 10:55 a.m. as opposed to 9:30 a.m. The first vote started at about 9:15 a.m. When we were last here, we had just concluded an examination, I think, by Senator Bennett, and the next examination comes from this side.

Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, we agreed last night we would go to Senator Boxer, but she's been detained a few moments, as I understand it, so I'll yield to Senator Dodd for our 10-minute round here and if Senator Boxer comes in while he's proceeding, we'll be able to yield to her. If not, after we come to your side for your 10-minute round, we'll pick her up on the next round.

The CHAIRMAN. If I might, would you stop the clock because I don't want this to count against the other side. Yesterday at 2:48 p.m., the Justice Department sent to Mr. Chertoff and Mr. Ben-Veniste a letter from Paul J. Fishman, counsel to the Attorney General, in which it is indicated—we'll make a copy available—that Mr. Margolis' physician had indicated that he could and would be able to testify.

Counsel has contacted Mr. Fishman, who was counsel to the Deputy Attorney General, Mrs. Gorelick, and Mr. Margolis would like to testify and will be testifying this afternoon. Now, that is unusual. To the extent that he had open heart surgery and there was a question of whether or not he would even be able to testify, and we were advised of that initially in a letter of July 12, and they

said possibly the second week in August, and now, provided that he has sufficient time to take breaks, if necessary, and so it's our intention to give him an opportunity to testify. We're hoping to conclude this portion of our review today, or certainly by tomorrow.

Senator SARBANES. Mr. Chairman.

The CHAIRMAN. Yes, Senator.

Senator SARBANES. First of all, let me say that I welcome this letter. Mr. Margolis had been on the list as a relevant witness, but then had this serious heart problem, as I understand it——

The CHAIRMAN. It was a quadruple bypass surgery.

Senator SARBANES. I'm pleased for him that his recovery is proceeding at apace and pleased that we're able to get a full record. I thought we were going to have a discussion over the break about whether we would depose him ahead of his testimony, as we've done with all the other witnesses, and I would like to reserve that for discussion amongst ourselves.

The CHAIRMAN. Certainly, we'll discuss that.

Senator SARBANES. It may not be necessary and I understand and, in fact, subscribe to the Chairman's desire to bring this phase of the hearings to a conclusion before the break, so hopefully amongst ourselves, we can work that out for the process we want to follow with respect to Mr. Margolis. If we did take him directly this afternoon, I think he would be the only witness who had not been deposed ahead of time.

The CHAIRMAN. He would be the only witness, yes.

Senator SARBANES. Senator Dodd.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Thank you, Senator Sarbanes. I'll yield my time at this moment to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator Dodd.

Good morning, Mr. Nussbaum.

CONTINUED SWORN TESTIMONY OF BERNARD W. NUSSBAUM, FORMER COUNSEL TO THE PRESIDENT OF THE UNITED STATES

Mr. NUSSBAUM. Good morning, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Let me direct your attention to July 21, the day after Mr. Foster's death and ask you whether on that day you had occasion to talk with Detective Markland of the Park Police and whether on that day, as reflected in Mr. Markland's report, you advised Mr. Markland that you, together with Maggie Williams and Patsy Thomasson had conducted a brief search for a note in Mr. Foster's office the previous evening?

Mr. NUSSBAUM. That's correct. I spoke to a member of the Park Police, presumably Detective Markland, on the 21st, and I told Detective Markland, as you described it, that Patsy Thomasson, Maggie Williams, and I had been in Vince's office the night before, not too many hours before, to conduct a brief and cursory search of that office looking at surfaces basically for a suicide note.

Mr. BEN-VENISTE. Let me direct your attention to Park Police Exhibit 29, which is Mr. Markland's report of his interview of you of July 21, 1993, and direct your attention to the third paragraph.

Would you read that? Can you? I see you don't have a hard copy. Let me read it. This is not an eye test, Mr. Nussbaum.

Mr. NUSSBAUM. Yes.

Mr. BEN-VENISTE. Mr. Markland said:

On July 20, 1993, after Vincent Foster's death became known to him, Mr. Nussbaum responded back to the White House where he went through Mr. Foster's office with Patsy Thomasson and Maggie Williams.

I take it you did not use the words, "I responded back to the White House." That's kind of police lingo.

Mr. NUSSBAUM. No, I didn't use that language.

Mr. BEN-VENISTE. But you went to the White House?

Mr. NUSSBAUM. I went to the White House.

Mr. BEN-VENISTE. Again, here it appears that Detective Markland has simply made an error in confusing your name with that of Mr. Foster, but what I'm sure he meant was "Mr. Nussbaum stated——

Mr. NUSSBAUM. That's correct.

Mr. BEN-VENISTE. —that they conducted a brief, quick search to see if Mr. Foster may have left a suicide note on his desk;" correct?

Mr. NUSSBAUM. That's correct.

Mr. BEN-VENISTE. So it is clear that you did not attempt to keep the fact that you, Ms. Williams, and Ms. Thomasson had been in the office the night before to conduct the search from the police?

Mr. NUSSBAUM. That is correct.

Mr. BEN-VENISTE. You told them at the first opportunity you had?

Mr. NUSSBAUM. That is correct.

Mr. BEN-VENISTE. Then it goes on to say, "This search lasted from 2200 to 2400 hours." I take it you would not under any circumstances have been using military time, but this indicates that the search lasted 2 hours, between 10:00 and 12:00 p.m. Is that the case, or is that simply an error?

Mr. NUSSBAUM. That is an error.

Mr. BEN-VENISTE. I believe Mr. Markland, Mr. Chairman, has cleared that up in his deposition and has recognized that that was an error. "Mr. Nussbaum stated no documents were removed from the office." I take it that is something which you did, in fact, tell Detective Markland?

Mr. NUSSBAUM. That is true.

Mr. BEN-VENISTE. That was true at the time and, I take it from your testimony, is true now?

Mr. NUSSBAUM. It was true at the time, and it is true now.

Mr. BEN-VENISTE. Now, yesterday, a question came up with respect to Mr. Burton's notes, which were identified in documents produced by the White House to this Committee as Z514. Could we put that up, please. Z514 was described by Mr. Burton as a note which he thinks he wrote on or about July 28 or 29. This would have been in the days after the torn-up note was discovered by Mr. Neuwirth and yourself. Yesterday, you were asked some questions about this. Mr. Burton testified that this note is properly interpreted as saying, "far happier if discussed" or "disclosed if someone other than Bernie."

Mr. Gergen testified before this Committee in open hearings that there were discussions with the Justice Department once the note

had been discovered and turned over about who and under what circumstances the contents of the note would be disclosed—who would disclose it and under what circumstances. Do you recall that that had occurred?

Mr. NUSSBAUM. Yes.

Mr. BEN-VENISTE. Mr. Gergen's testimony was that he believed this reference—since he was one of the participants in this meeting—that this reference related to the fact that the Justice Department was concerned that no one other than the Park Police should be the ones who would be in charge of disclosing the contents. Does that comport with your recollection?

Mr. NUSSBAUM. Yes, that makes sense to me.

Mr. BEN-VENISTE. Let me ask you, Mr. Nussbaum, whether in connection with the departure of Justice Department attorneys on the 22nd following the search where it was disclosed to them, indeed, it seems they participated in the discussion about Mr. Foster's personal files and effects being returned or being transmitted to Mr. Foster's family attorney, then Mr. Spafford and Mr. Hamilton. Do you recall that sequence of events?

Mr. NUSSBAUM. Yes, I do.

Mr. BEN-VENISTE. In that regard, according to Mr. Adams' testimony, he anticipated that the personal files of the Clintons, the real estate and financial records which you described in his presence, and in somewhat summary fashion, according to the testimony, was to be transmitted to the Clintons' personal attorney; is that correct, sir?

Mr. NUSSBAUM. Yes.

Mr. BEN-VENISTE. When you were describing the financial records and the personal real estate investment records of Mr. and Mrs. Clinton, did anyone from the Justice Department or the police request that you provide further detail with respect to those records?

Mr. NUSSBAUM. No.

Mr. BEN-VENISTE. Did they ask you in any way to break down what investments, what year tax records, what was included in that material that you described in summary form?

Mr. NUSSBAUM. No.

Mr. BEN-VENISTE. Was there any indication whatsoever that they were interested in reviewing any of that material?

Mr. NUSSBAUM. There was no such indication.

Mr. BEN-VENISTE. I would like—I see that my time is about up.

The CHAIRMAN. Do you have another question?

Mr. BEN-VENISTE. No, I think we would—

The CHAIRMAN. If you have another line, then, Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Good morning, Mr. Nussbaum.

Mr. NUSSBAUM. Good morning, Mr. Chertoff.

Mr. CHERTOFF. Let me direct your attention to Monday, July 26, which you've indicated in your opening statement was the day during which Mr. Neuwirth called your attention to pieces of paper that he told you he had found in the briefcase in Mr. Foster's office.

After that period of time, there came a point either later on Monday or early on Tuesday where you called Deborah Gorham into your office; correct?

Mr. NUSSBAUM. I have no firm recollection of that happening. I don't say it didn't happen. I'm not saying—undoubtedly, as I reconstruct it now, I called Deborah Gorham in and probably asked her what she knew about Vince's briefcase or scraps at the bottom of the briefcase, but as I sit here now, I have no firm recollection of that conversation.

Mr. CHERTOFF. You have some kind of a recollection; right?

Mr. NUSSBAUM. I have some kind of a recollection, yes.

Mr. CHERTOFF. Is it fair to say that the two of you were by yourselves?

Mr. NUSSBAUM. No, I can't remember that.

Mr. CHERTOFF. Did you question her?

Mr. NUSSBAUM. My answer to that is probably yes.

Mr. CHERTOFF. Did you grill her?

Mr. NUSSBAUM. No, my answer to that is no. As I said yesterday, Mr. Chertoff, Deborah was in severe grief and shock. It lasted with her a lot longer, understandably—please, Mr. Chertoff, let me finish.

Mr. CHERTOFF. Go ahead.

Mr. NUSSBAUM. Let me finish. It lasted a lot longer with her than with other people and that's understandable. Her boss just died, and she was—I don't want to use—a little bit out of it from time to time. I think at that time, it was perfectly understandable. I think I was probably very gentle with her at that time, but, nonetheless, persistent. If I wanted to ask her a question, I might have asked it more than one time, that question. So I can understand her now looking back and thinking of that as grilling. I didn't perceive it as grilling, nor do I believe that I did grill her.

Mr. CHERTOFF. Before I pick up on that line of questioning, you made an observation about her state of mind. Is this something she's told you?

Mr. NUSSBAUM. No——

Mr. CHERTOFF. Has she told you she was overcome by grief and more overcome by grief than anybody else?

Mr. NUSSBAUM. No, this is something I observed at the time.

Mr. CHERTOFF. This is your speculation, or your interpretation, or your opinion about her state of mind; right?

Mr. NUSSBAUM. The best word is my observation.

Mr. CHERTOFF. Your opinion; right?

Mr. NUSSBAUM. My observation, what I perceived at the time.

Mr. CHERTOFF. Now, in the questioning of Ms. Gorham, did you probe her to see what she had seen on the paper in the briefcase?

Mr. NUSSBAUM. I may have, but I have no present memory of that.

Mr. CHERTOFF. Did you ask her to describe what she had seen in the briefcase?

Mr. NUSSBAUM. I most likely did.

Mr. CHERTOFF. Did you ask her whether the paper in the briefcase was torn up when she saw it or whole when she saw it?

Mr. NUSSBAUM. I don't remember that.

Mr. CHERTOFF. But you don't doubt it?

Mr. NUSSBAUM. I don't doubt it.

Mr. CHERTOFF. Did you ask her how many sheets of paper she had seen in the briefcase?

Mr. NUSSBAUM. I don't recall asking her that.

Mr. CHERTOFF. Did you ask her what color the paper she saw in the briefcase was?

Mr. NUSSBAUM. I don't recall asking her that.

Mr. CHERTOFF. Can you say you didn't ask her that?

Mr. NUSSBAUM. No, I can't say I didn't ask her that.

Mr. CHERTOFF. Were you trying to get a complete picture from her about everything that she had seen in the briefcase earlier in time?

Mr. NUSSBAUM. Yes, I think that's fair.

Mr. CHERTOFF. Now, when you questioned her about this, you already had the briefcase; right?

Mr. NUSSBAUM. I believe so, yes, I certainly had the briefcase, yes.

Mr. CHERTOFF. Of course; right?

Mr. NUSSBAUM. Absolutely, yes.

Mr. CHERTOFF. This is after Mr. Neuwirth told you what he found in it?

Mr. NUSSBAUM. Yes.

Mr. CHERTOFF. So you had whatever paper Mr. Neuwirth showed you; right?

Mr. NUSSBAUM. That's correct.

Mr. CHERTOFF. You had the briefcase to go look at; right?

Mr. NUSSBAUM. Yes.

Mr. CHERTOFF. In fact, the briefcase had been in your possession and control the previous Thursday; right?

Mr. NUSSBAUM. It was, yes.

Mr. CHERTOFF. Yet you nevertheless asked Ms. Gorham to sit there while she told you what she had seen the previous week in the briefcase; is that correct?

Mr. NUSSBAUM. As I say, I don't have a firm recollection, but she remembers it, and I have no reason to dispute her recollection about that.

Mr. CHERTOFF. Did she tell you about a folder she had seen in the briefcase?

Mr. NUSSBAUM. I recall no such conversation about a folder in the briefcase.

Mr. CHERTOFF. So when you say you don't recall it, because again sometimes when you've said you don't recall, it means you don't deny it. Sometimes you've said no, it didn't happen.

Mr. NUSSBAUM. Well, that's a fair comeback to me. My comeback to you will be I don't believe there was such a conversation about a folder. At least I don't remember any such conversation.

Mr. CHERTOFF. That would be pretty memorable; right, if she had told you there was a folder in there?

Mr. NUSSBAUM. No, not necessarily.

Mr. CHERTOFF. In other words, if Ms. Gorham had told you that on the previous Thursday, as she's testified, she did tell you—I should tell you to be fair—if she told you on the previous Thursday she saw a folder in the briefcase, it wouldn't concern you that no such folder had emerged on the 26th?

Mr. NUSSBAUM. No, I pulled out all the folders that were in the briefcase on the 22nd. I don't remember any discussion about a folder. I pulled the briefcase over to me, reached down and pulled

out all the files and all the folders, to use that terminology, from the briefcase.

Mr. CHERTOFF. So you knew what was in the briefcase as such the 22nd?

Mr. NUSSBAUM. Obviously, there were files and folders in the briefcase which I took out and put on top of Vince Foster's desk. I've testified to that.

Mr. CHERTOFF. Even though you were the one who handled the briefcase on the 22nd and even though you had the briefcase on the 26th and even though Mr. Neuwirth gave you the pieces of paper in the briefcase on the 26th, you nevertheless were asking her to tell you what she had seen in the briefcase. Did you think she had seen something there you hadn't seen?

Mr. NUSSBAUM. No. To try to reconstruct it now——

Mr. CHERTOFF. Remember, don't reconstruct. Remember, if you can.

Mr. NUSSBAUM. We had found a handwritten list and I wanted to see if she had any idea when Vince wrote this piece of paper, when he put it in his briefcase, if she had any knowledge of those facts. She was the one who was closest to him in a working sense, support sense in the office and she may have had a knowledge as to when he wrote out this handwritten list, when he tore it up, when he threw it in the briefcase.

She had no such knowledge, at least she didn't convey any such knowledge to me, so that's what I was trying to do. I was trying to find out if she knew anything about the scraps of paper that Steve Neuwirth found in the briefcase on July 26. I think, Mr. Chertoff, that's a perfectly natural thing to do.

Mr. CHERTOFF. I understand why you would want to ask her if she had ever seen him write a list, but I must say what puzzles me is why you would ask her what she had seen in the briefcase after his death.

Mr. NUSSBAUM. I frankly don't recall particularly asking her what she had seen in the briefcase after his death, although I may have said that in connection with the discussion as to how—if she knew anything about how these scraps of paper or this note, this list got into the briefcase.

Mr. CHERTOFF. Didn't we just establish a moment ago that you, in fact, did ask her questions about what she saw in the briefcase?

Mr. NUSSBAUM. My memory is vague. If she says it, I don't—I can't dispute it, and it may well have happened.

Mr. CHERTOFF. Of course, that would have been at a period of time after Mr. Foster died; right?

Mr. NUSSBAUM. Yes, of course.

Mr. CHERTOFF. Now, as to the folder, you have no recollection about that?

Mr. NUSSBAUM. No, I have no recollection about asking for a folder, because I was clear in my mind that I had pulled out all the folders from the briefcase on July 22.

Mr. CHERTOFF. How did you react when she said to you well, I saw something yellow in the bottom of the briefcase and the top of the folder?

Mr. NUSSBAUM. Frankly, Mr. Chertoff, I don't remember her saying that to me.

Mr. CHERTOFF. All right. That's fair. There came a point in time that evening when you wanted to have a typewriter brought into your office?

Mr. NUSSBAUM. I don't recall that.

Mr. CHERTOFF. So you don't have a memory of that either?

Mr. NUSSBAUM. I don't have a memory of that. I remember wanting to transcribe the note and I remember it may well be that I or Steve Neuwirth asked for a typewriter. I have no memory of it. I don't think it happened, but it's possible. I do remember wanting to transcribe the note—that I remember clearly—and I remember thinking probably the best way to do it was to do what I did, which is namely to write out in my own handwriting the note just as Vince had written out the note—or a list, not really a note, the list as he did it. I did that so that it would enable me to show it to anybody I had to show it to, and that's what I did.

Mr. CHERTOFF. When did you call Susan Thomases to tell her—or when did you speak to Susan Thomases and tell her about the discovery of the writing?

Mr. NUSSBAUM. Until Ms. Thomases testified here, I did not remember a discussion with Susan Thomases about the writing on July 26, except it's quite—if Susan Thomases has testified to such a conversation, I have no doubt that that conversation took place as she describes it.

Mr. CHERTOFF. Do you remember it?

Mr. NUSSBAUM. I have no memory of that conversation.

Mr. CHERTOFF. So you can't help us understand why you would have told Susan Thomases about the note before, let's say, Lisa Foster heard about it?

Mr. NUSSBAUM. No. I can understand why I would discuss it with her. I discussed it—she was—again, as I said yesterday, she was a friend and a close advisor of the President and the First Lady and of mine in the White House. This was an event which was of some importance. I didn't see any harm in her knowing about it. It was clear from minute 1, as far as I was concerned, from the time we discovered this handwritten list, that it would be turned over—let me finish, Mr. Chertoff.

Mr. CHERTOFF. I'm not stopping you, Mr. Nussbaum.

Mr. NUSSBAUM. I saw your lips moving.

Mr. CHERTOFF. Just a facial mannerism.

Mr. NUSSBAUM. OK. So from minute 1, I knew it was going to be turned over to the law enforcement authorities as soon as possible, which turned out to be the next day. I saw no problem—although I have no memory of this conversation, I would see no problem in telling Ms. Thomases that we had found such a list, which was going to the law enforcement authorities.

Mr. CHERTOFF. On that same day did you see a problem with telling Janet Reno or Phil Heymann that you found the list?

Mr. NUSSBAUM. We were going to turn the note over to law enforcement. The problem—and maybe I should have told Janet Reno and Phil Heymann, in retrospect, on that day.

Mr. CHERTOFF. Was that one of those big calls that maybe you say you didn't make?

Mr. NUSSBAUM. No, that was a little call because I talked to them the next day. Let me say, once this note was turned over, it

was only a matter of time—and perhaps a short period of time—that the thing would become—there would be widespread publicity about.

All I wanted was for Lisa Foster to have a chance to see it herself. I thought that was just common decency to have a chance to see it herself, and I thought the President, if he wished, which he didn't wish, ultimately, would have an opportunity to hold it in his own hand, in effect, and look at it himself and then it would be turned over to Janet Reno or Phil Heymann or the Park Police ultimately. I didn't think that was a strange act or improper conduct. I thought that was acting in a human, decent way and I have no regrets about doing it like that.

Mr. CHERTOFF. Let me say this, if I can just close with this. I understand why as a matter of respect for Lisa Foster and the President you would want them to be the first to know about the note. I also understand that there was some discussion about executive privilege or something.

Mr. NUSSBAUM. Correct.

Mr. CHERTOFF. What I'm having difficult understanding, maybe you can reflect on it and we'll get back to it later, is why in light of that sensitivity that the President and Lisa Foster ought to be the first to know about it, why is it that Susan Thomases actually learned before both of them?

Mr. NUSSBAUM. Susan Thomases didn't learn before both of them, before the President and Lisa Foster. I called Jim Hamilton—I talked to Jim Hamilton——

Mr. CHERTOFF. When?

Mr. NUSSBAUM. I'm almost positive I talked to Jim Hamilton on Monday, July 26, after we found the note to tell him we had found the note so he could break it to Lisa. I wasn't the first one who broke it to Lisa that we had found a note. I called the family lawyer on July 26 and said we had found this note. We found this list. He was the one who told me Lisa was coming in the next day, so that provided me then the opportunity to sit down with Lisa myself and to hand it to her, but Lisa Foster found out about the note on July 26 from Jim Hamilton. That was another person I talked to on that day.

Mr. CHERTOFF. You're confident that on the 26th Lisa Foster knew about the note?

Mr. NUSSBAUM. Well, I'm not—I assumed—maybe I was speaking too fast.

Mr. CHERTOFF. Let's be careful. Let's not assume.

Mr. NUSSBAUM. That's correct. That's correct. I told it to Hamilton on the 26th and my assumption is that Hamilton would then call Lisa Foster. But when Lisa Foster walked into my office on the 27th, I just didn't pop this note on her and say look what we found and she was shocked. She knew she was coming to my office to see a note.

Mr. CHERTOFF. I guess I leave you with a final question. Why is it that—bearing in mind the very reasonable belief that you ought to respect the privacy of the President and Lisa Foster in terms of having them know about the note first, why is it that on the Monday in question you chose to call Susan Thomases or to speak to

Susan Thomases and tell her about the note and yet you didn't tell Phil Heymann or Janet Reno?

Mr. NUSSBAUM. I didn't choose—I don't believe I chose to call Susan Thomases.

Mr. CHERTOFF. Speak to her.

Mr. NUSSBAUM. I did speak to her. I spoke to Susan.

Mr. CHERTOFF. She did not compel you to tell her?

Mr. NUSSBAUM. No, she didn't compel me to tell her, but she's a close advisor, a close friend of mine, a close friend of the Clintons, and a close friend of Vince Foster. She seemed a natural person to disclose this information to when this information was going to be disclosed shortly thereafter to law enforcement. I still see nothing wrong with it, Mr. Chertoff.

The CHAIRMAN. Senator Sarbanes. Thank you for your patience and I think it is important that counsels on both sides get an opportunity to complete a line if they're pursuing it. I want to thank you for that.

Senator SARBANES. I yield to Senator Boxer, Mr. Chairman.

OPENING COMMENTS OF SENATOR BARBARA BOXER

Senator BOXER. Thank you so much.

Mr. Nussbaum, the last time we saw each other was in round 2 of the Whitewater hearings and we are now in round 3 and it's not clear how many more rounds we have to go and you've been around and around these issues frankly, I think, a very long time.

I don't know what else there is other than pound away at points you've already made. But it's interesting to me because when I questioned you last time you and I had a disagreement over the matter of recusal.

Mr. NUSSBAUM. Yes.

Senator BOXER. It was a very, I thought, important disagreement which revolved around your point of view at that time that when there are no technical conflicts of interest, you think an individual should not recuse. And I said what was more important is how the person felt inside and if the person felt uncomfortable, that should be the guide. So it was an issue where we had a disagreement and I have to tell you as I approach this hearing I thought I was going to disagree with you again fairly vehemently. I honestly thought I was going to view your moves on that day in terms of the papers, which is supposed to be what we're talking about today, the handling of the papers.

Mr. NUSSBAUM. Yes.

Senator BOXER. I felt I was going to view you as being dictatorial and uncaring about the views of others, and I have to say as I listen to you and I listen to other people who have testified, I believe you took a compromise course to the issue, a moderate course between those who told you there should be no access and those who told you there should be unfettered access essentially. And I would—and we are going other ground, but as we get further and further to the end of these hearings, I think it's important for my own self to sum up what I've learned.

Now, if you listen to Mr. Heymann, he says, and I'm quoting from his deposition, "I thought that for the White House Counsel's"—wait a second. I have to find the rest of this. "I thought that

for the White House Counsel's Office to make these decisions largely by itself as it did was simply not an acceptable way of addressing them. A player with significant stakes in the matter cannot also be a referee." And he was very clear about his feelings on that point and you have stated you respect his point of view although you disagree with it; is that correct?

Mr. NUSSBAUM. That's correct, Senator.

Senator BOXER. You don't think that he's being, shall we say, unreasonable to have this point of view?

Mr. NUSSBAUM. Well, I understand his point of view. I do respect it and he is a very able and respected person, but I do have a vehement disagreement with his point of view, which I expressed yesterday. Senator, with all due respect to you and to the other Members of this Committee, I think in some ways it's even a dangerous and cynical point of view because what it says is basically, as I said in my statement yesterday, that only Justice Department lawyers can somehow be trusted and other lawyers who have the same ethical obligations, White House lawyers or private lawyers, are not deserving of trust. And while I know Phil doesn't intend to do this, what that does is feed into the very cynicism which sort of pervades a lot of what's going on today.

Senator BOXER. I appreciate that view. And then you had Mr. Quinn on the other side, who said, and I quote, "It was my view at the time and it remains my view today that prior to the search of Mr. Foster's office by the Park Police, it was incumbent upon Mr. Nussbaum or some other appropriate person from the Counsel's Office to undertake a preliminary review in order to determine whether there were sensitive, privileged, or classified materials that required protection. As far as I was concerned, these obligations simply were more important than to maintain good appearances."

In other words, cutting through that, what Mr. Quinn said is you should have shut the door, gone through every piece of paper in that office, decided what was privileged and then invite everyone in. You rejected that. Can you explain to me why you rejected that?

Mr. NUSSBAUM. Your description of Mr. Quinn's position is absolutely correct.

Senator BOXER. I read it from his deposition.

Mr. NUSSBAUM. Absolutely precise. That's exactly the position he took, and I respected that view. He's a very able lawyer and a very experienced lawyer also. I understood that view. The reason I rejected it is because, frankly, I was Counsel to the President in his official capacity. I was not representing a private individual and, Senator, I was concerned about public perceptions. I was concerned about appearances, and I didn't think it was necessary to bar the door to Mr. Foster's office in order to adequately protect our rights, the right to protect confidentiality and privilege and to preserve the right to protect privilege and law enforcement issues.

Senator BOXER. So what you did was, you had the Justice Department and the Park Police there and you basically described each document and put it in the appropriate place. Now, I want to get to this other question that keeps coming back and I guess we'll have another person after you come and say the same thing, that you had promised Mr. Heymann, you had made a commitment,

signed, sealed, and delivered that you were going to do it a different way, that the police would be able to, in fact, look at every document rather than you describe it. Now, when you testified, you said, "I told them I would consider it. I never promised it." And what I'm trying to see if I can have you remember is this:

Sometimes I have people come into my office from both sides of an issue because I like to work out disagreements with everyone in the room, rather than meeting one person here, another person another day. Each side presents a view, and I try to be objective and I sit back and they talk about it. Sometimes they have left my office and one party said she's going to be a cosponsor of the bill, and the other party said she opposes the bill and what I basically said in the meeting was not much, except that's interesting. That's a good idea. That's a good point. I'm going to consider it.

Thinking back to that moment because that's an important point because Members on the other side are saying you reneged on a promise, and the hint is that someone whispered in your ear and said, Bernie, back out of that deal. Can you tell us, if you can, what you may have said to lead people to think you had already decided on something and it was done?

Mr. NUSSBAUM. I said the kind of things that you just described that you say sometimes when people are in your office. I said yes, that is an interesting proposal. It's something that we can talk about and it's something that I can consider. I am worried about a waiver. I'm not sure it meets my needs, but it is something we can talk about. I wanted to accommodate them. I really was sort of trying to bend over backward to get them into the office without violating my ethical obligations, so I may have expressed interest in what they perceive to be a compromised proposal and it may well be they left feeling there was an agreement and it may well be, then, that I'm responsible for a misunderstanding or miscommunication, but in my mind, Senator, I did not agree nor did I say I agree nor in my colleagues' minds who were present with me from the White House Counsel's Office—did they believe there was an agreement.

Senator BOXER. So I can sum up, you may have said some encouraging words in terms of the idea so as not to say to somebody that's a bad idea. Now, the undercurrent through all these hearings is that the First Lady is telling you what to do with the handling of the papers through all this. I have a couple of quick questions. They're yes or no. Did the First Lady personally tell you how to handle the papers in the office?

Mr. NUSSBAUM. No.

Senator BOXER. Did she tell you what to do through Susan Thomases?

Mr. NUSSBAUM. No.

Senator BOXER. Did she tell you what to do through any other intermediary?

Mr. NUSSBAUM. No.

Senator BOXER. Did she write you a note telling you what to do?

Mr. NUSSBAUM. No.

Senator BOXER. Did she send you an E-mail telling you what to do?

Mr. NUSSBAUM. No.

Senator BOXER. Did she ever call you up and tell you what to do?

Mr. NUSSBAUM. No.

Senator BOXER. Do you ever take instructions from Susan Thomases?

Mr. NUSSBAUM. No.

Senator BOXER. If Mrs. Clinton wanted to tell you something, would she go through an intermediary?

Mr. NUSSBAUM. Not likely. Mrs. Clinton and I talk to each other directly. We don't always agree with each other, but we have a relationship in which we're very candid and frank with each other. She's not afraid—believe me, she's not afraid to tell me what she thinks and I happen not to be afraid to tell her what I think.

Senator BOXER. Did you ever think it would be necessary to ask Mrs. Clinton or the President what you should do in the handling of the office papers?

Mr. NUSSBAUM. No, I felt this was my call to make, my decision to make as White House Counsel.

Senator BOXER. Those personal files—and I'm almost finished, Mr. Chairman—that were in Mr. Foster's office, they had to do with filing of official documents, did they not?

Mr. NUSSBAUM. Yes, they were being used——

Senator BOXER. Conflict of interest forms, blind trust?

Mr. NUSSBAUM. Correct.

Senator BOXER. The things that we have to do as well here?

Mr. NUSSBAUM. That's correct.

Senator BOXER. You believed they belonged to the Clintons and you sent them over to them, and I guess my final question is this: President and Mrs. Clinton are American citizens, are they not?

Mr. NUSSBAUM. Yes, they are.

Senator BOXER. Do they not have the rights of any other individual?

Mr. NUSSBAUM. I believe so.

Senator BOXER. Does every individual in this country have a right to have their personal papers that refer to their private business?

Mr. NUSSBAUM. Yes.

Senator BOXER. Wasn't that what you did, you sent them their private papers and you suggested it go to their private attorney?

Mr. NUSSBAUM. That's correct.

Senator BOXER. Thank you very much.

Mr. NUSSBAUM. Thank you, Senator.

The CHAIRMAN. Thank you, Senator.

Senator Shelby.

OPENING COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Mr. Chairman.

Good morning, late morning anyway, Mr. Nussbaum.

Mr. NUSSBAUM. Good morning, Senator.

Senator SHELBY. Mr. Nussbaum, if someone controls anything, isn't that central to the outcome, is control central to the outcome of the transaction? For example, if someone controls something, you can just about predict the outcome, can't you? I'm asking you an abstract question, but this is basically a given, isn't it?

Mr. NUSSBAUM. Yes, to some extent.

Senator SHELBY. That's what I'm asking you. Thank you.

So I want to follow up with this, Mr. Nussbaum. Who controlled the investigation of Mr. Foster's death, the Department of Justice, the FBI, the Park Police, or you?

Mr. NUSSBAUM. I did not control the investigation of Mr. Foster's death. I was responding to inquiries made by investigators, namely the Park Police, the Justice Department, and the FBI. That is not control.

Senator SHELBY. Who, Mr. Nussbaum, decided how the search would be conducted? The Department of Justice, the FBI, the Park Police, or you?

Mr. NUSSBAUM. I decided in the first instance how the search would be conducted, but after the search was conducted, if there was any disagreement, or any feeling that it was inadequate in any way, there was a number of remedies available to the Justice Department and other law enforcement agencies. Namely, they could subpoena things, they could ask for search warrants, which of course there was no basis in this case to ask for. There's a number of things that could have been done by them if they felt that the search was inadequate in any way or correct processes were not being followed. I did not control the law enforcement process.

Senator SHELBY. But you controlled the basics of all of it. I want to go on.

Mr. NUSSBAUM. I disagree with that, Senator, as you know.

Senator SHELBY. I think it's an important question. Did you decide, Mr. Nussbaum, as White House Counsel, to have your associates in the White House Counsel's Office sit in on the interviews conducted by the Park Police and the FBI, did you?

Mr. NUSSBAUM. Yes.

Senator SHELBY. Who decided, then, Mr. Nussbaum, or let me rephrase that. Strike that.

Mr. NUSSBAUM. There was no objection, Senator.

Senator SHELBY. Who decided when the note that was found would be turned over to the investigators? Did you decide that?

Mr. NUSSBAUM. Yes, I did.

Senator SHELBY. Who controlled basically the investigation of Mr. Foster's death?

Mr. NUSSBAUM. The investigators, not me.

Senator SHELBY. Not you? You had nothing to do with it?

Mr. NUSSBAUM. I didn't control the investigation. I was responding to inquiries, producing documents, providing interviews, and also turning over the note. We were cooperating with the investigators in an intense but sensible fashion.

Senator SHELBY. But going back to the abstract question I asked you, and you answered it in the affirmative when I said basically control of anything is central to the outcome of that particular transaction. I think it would apply to you in this situation.

Mr. NUSSBAUM. But I just told you, I didn't control.

Senator SHELBY. That was your opinion?

Mr. NUSSBAUM. That's correct. It's also the truth.

Senator SHELBY. Mr. Nussbaum, let me go on with some more questions. You were counsel to the House, the U.S. House of Representatives Judiciary Committee during the Watergate investigation in 1974, I believe it was.

Mr. NUSSBAUM. Yes, I was the senior person on the staff, that's correct.

Senator SHELBY. Absolutely. Mr. Heymann, was he also working over there?

Mr. NUSSBAUM. As Senator Sarbanes pointed out yesterday, he was working for the special prosecutor.

Senator SHELBY. Mr. Heymann said that you were not in a position, in his testimony, to be the referee concerning access to Mr. Foster's documents. Why were you the right person to be the referee?

Mr. NUSSBAUM. Because, as I said in my statement yesterday, Senator, every single day of the year, tens of thousands of lawyers all over the country act as referees when it comes to reviewing and producing documents. The normal way people get documents, the normal way law enforcement gets documents, the normal way documents are produced in civil litigation, is for a subpoena to be sent or some other process to be sent. Then what happens is the lawyer on the other side acts as a referee. He gathers the documents, he reviews the documents, he decides what's privileged, what's not privileged. He does all those things. He acts as a referee. All I was doing is what lawyers do every day all over the United States, and Mr. Heymann has just sort of a misconception.

Senator SHELBY. Lawyers every day don't have the power or the perception of power as Counsel at the White House that you did.

Mr. NUSSBAUM. If I can just finish.

Senator SHELBY. Go ahead.

Mr. NUSSBAUM. Lawyers every day do what I was doing on that day, and Mr. Heymann just sort of misperceives it when he says a lawyer has a stake in the matter and, therefore, cannot act as a referee.

Senator SHELBY. Mr. Nussbaum, during the Watergate situation, didn't the White House Counsel at that time want to be the referee over which tapes, the Nixon tapes, would be turned over to the Watergate prosecutor? That was central to the situation. Is that right? Just refresh your memory?

Mr. NUSSBAUM. I'm glad we can talk about that, Senator, because in Watergate—

Senator SHELBY. I don't want to talk about it. I want you to answer my question.

Mr. NUSSBAUM. I have to talk about it to answer your question, Senator. In Watergate, the White House resisted, bitterly resisted until the Supreme Court ordered it to turn over the tapes and other documents.

In this case, in the Clinton White House, what happened was, while I protected the right to assert privilege, no privilege was ever asserted. So contrary to the Nixon White House, the Clinton White House—number one, preserved every document, there's no 18½ minute gap; number two, turned over every document that law enforcement requested; and number three, cooperated fully with law enforcement. That's the difference, Senator, between Watergate and what is now known as Whitewater.

Senator SHELBY. How could you assert what you just said, knowing that you helped orchestrate the dispersal of the documents everywhere, the papers everywhere, stonewalled a real investigation

until there was no need for a real investigation because there's probably not much there? How could you do that?

Mr. NUSSBAUM. You know something? I agree with you. There's not much there.

Senator SHELBY. After you got through with it.

Mr. NUSSBAUM. No, no, before it began. There was not much there before I started and there's not much there now. Nor will there be much there if you have hearings for another 6 weeks or 8 weeks.

Senator SHELBY. Did you preserve the index to Mr. Foster's files that the secretary talked about here as missing?

Mr. NUSSBAUM. I know, Senator Shelby, of no index. I know personally of no index, but apparently you do have an index contained on a computer disk with respect to the files in Mr. Foster's office.

Senator SHELBY. It's missing, though, and you said nothing was missing, and that was obviously missing.

Mr. NUSSBAUM. Nothing is missing as far as I know.

Senator SHELBY. Sure, that was missing. That's in dispute. We had sworn testimony before this Committee, saying that she made an index and it's missing, and it could be central to what people are looking for.

Mr. NUSSBAUM. But she also testified that she used her computer and her index, that there is apparently an index on her computer.

Senator SHELBY. Well, we're not sure about that.

I wanted to ask you some other things. I want to put some notes up. Are you familiar with Mr. Gearan at the White House?

Mr. NUSSBAUM. Yes.

Senator SHELBY. I'm sure you've seen these notes, that he testified under oath that he contemporaneously made, at 11:45 a.m., July 29, 1993, dealing in a party call, conference call with Phil Heymann, Dave Gergen, and himself. You're familiar with this, are you not?

Mr. NUSSBAUM. No, I'm not. I mean, I know there are notes. I wasn't involved in that phone call.

Senator SHELBY. Would counsel give him a copy of these? It's just four pages, if they would. I just want to refer to parts of it, if I can.

These are notes that Mr. Gearan testified under oath that he made, as I said, in a conversation with Mr. Heymann. I'll refer you to page 3. These are Phil Heymann's words that he took down, basically in all stages, if we can go to page 3. Basically in all stages, controlled in all ways. In other words, he was talking about you, the White House Counsel. They don't feel they can say, and that is the Park Police and the FBI, they've conducted an inquiry. Much too much control from the beginning of investigation, Mr. Nussbaum. This is Phil Heymann again. It was a mistake to rely on silence on low-level investigators when dealing with a high-level case like this. Mr. Heymann, who you said was a man of principle, integrity, and intellect.

Mr. NUSSBAUM. That's correct.

Senator SHELBY. These are his words and his observations of what you were doing at the White House, controlling or thwarting the whole investigation.

Now I'll go on to page 4, if I can. The Gearan notes—Dave Gergen, D.G. We need, if and when Park Police releases notifica-

tion for response. Phil Heymann, absolutely. I'll set it up. Then at the end, Phil Heymann, documents have been distributed over my objections. This is the Deputy Attorney General of the United States. And you're saying now you didn't control this investigation?

Mr. NUSSBAUM. Yes, Senator, I'm saying I didn't control this investigation. All that proves is that a person of great principle and integrity can sometimes be wrong.

Senator SHELBY. Even this morning, do you, searching your memory, not recall Phil Heymann's conversation with you when you said, I'll call you back? Will you let me know? And you didn't recall that, a man of your intellect? You don't recall that, seriously?

Mr. NUSSBAUM. I want to thank you for the nice compliment, Senator. No, I don't recall.

Senator SHELBY. You don't recall that?

Mr. NUSSBAUM. I don't recall promising to call him back. I may have, but I don't recall.

Senator SHELBY. What troubles me, and I know my time's about up, is why, Mr. Nussbaum, did you, a lawyer of experience, Water-gate experience, a competent trial lawyer, consciously, I believe, perhaps willfully, contaminate this whole investigation?

The Justice Department I believe never had a chance to do a thorough or complete investigation. Their papers have disappeared. You know it, we know it.

Mr. NUSSBAUM. No papers have disappeared.

Senator SHELBY. Yes, they disappeared. You've dispersed them. You said they've been distributed.

Mr. NUSSBAUM. That's not disappearing, every paper was preserved, no paper disappeared.

Senator SHELBY. That's in dispute. You obviously had a lot to hide, as Mr. Heymann asked you, did you have a lot to hide.

Mr. NUSSBAUM. That is false. We had nothing to hide.

Senator SHELBY. And you succeeded in doing it too well.

Mr. NUSSBAUM. I didn't hide anything, I didn't succeed in hiding anything. I had nothing to hide. Every document was preserved, nothing was destroyed. Every document that law enforcement requested was given to them, some right after Mr. Foster's death and some later when the Whitewater investigation—

Senator SHELBY. You controlled the investigation and you dispersed the documents.

Mr. NUSSBAUM. I acted in a proper fashion.

Senator SHELBY. And you know you did.

Mr. NUSSBAUM. I acted in a proper fashion. I acted as a good lawyer is supposed to act, and I'm proud of my conduct.

Senator SHELBY. You're proud of your conduct?

Mr. NUSSBAUM. Absolutely.

Senator SHELBY. You would probably be the only person in America who would be proud.

Mr. NUSSBAUM. I don't think so, Senator. I don't think so.

Senator SHELBY. My time is up.

The CHAIRMAN. Senator Sarbanes.

Senator SIMON. Mr. Chairman, if you could yield just for 30 seconds?

Senator SARBANES. I yield to Senator Simon.

Senator SIMON. I think it should be put in the record that when Mr. Heymann was asked did Mr. Nussbaum act ethically and legally, he said absolutely.

The CHAIRMAN. It is in the record. Obviously, the testimony of all of our witnesses, and we will review all of it.

[Pause.]

Senator SARBANES. I'm going to yield to Senator Kerry but before I do that, I think for the sake of the record, in light of some of the questioning that was just put, in Mr. Heymann's testimony, here before the Committee, he was asked:

Question: I understand your testimony is that the Park Police in that interim did not complain to Mr. Margolis about the White House cooperation?

Answer: That's correct.

Question: Following the search on the 22nd, you understood, did you not, from Mr. Adams and Mr. Margolis, when they reported back to you that Mr. Nussbaum had designated documents and items to turn over to the Foster family attorney?

Answer: Yes.

Question: And you weren't surprised by that, I take it?

Answer: I wasn't surprised.

Then later they also discussed turning over the personal documents relating to the Clinton's. Now that dispersal of documents took place after the search, not before the search, isn't that correct?

Mr. NUSSBAUM. That's correct, Senator.

Senator SARBANES. So this movement of documents out of the office was subsequent to and after the session at which the law enforcement officials were present?

Mr. NUSSBAUM. That's correct.

Senator SARBANES. The session at which you went through what the documents were and they indicated which ones they had an interest in?

Mr. NUSSBAUM. That's right.

Senator SARBANES. Senator Kerry.

OPENING COMMENTS OF SENATOR JOHN F. KERRY

Senator KERRY. Mr. Chairman, does my clock begin now?

The CHAIRMAN. Your time is running.

Senator KERRY. Mr. Nussbaum, I would like to follow up, if I can, on some of the questions Senator Shelby was asking you, so I can understand better the framework of some of the confrontation between you and he on that question of what happened. When you piled the documents or separated the documents for dispersal to the personal attorneys, you took all the personal documents, is that correct, at that time?

Mr. NUSSBAUM. First, I took the Foster personal documents and started piling them up.

Senator KERRY. You gave those to Attorney Spafford, correct?

Mr. NUSSBAUM. That's correct.

Senator KERRY. You then took the next group of documents, which were the personal documents of the Clinton's, correct?

Mr. NUSSBAUM. Yes, I did take those.

Senator KERRY. And you put those in a pile?

Mr. NUSSBAUM. At some point, I did that. I didn't do that during the search.

Senator KERRY. No, I realize that. You did that after the search?

Mr. NUSSBAUM. After the search, I put those in a pile, yes.

Senator KERRY. Those were then put in a box and given to Maggie Williams?

Mr. NUSSBAUM. That's correct, Senator.

Senator KERRY. Did you look at every single file that went into that box?

Mr. NUSSBAUM. I did not read every single file. I believe I glanced——

Senator KERRY. Could you make a list afterwards of every file that was in the box?

Mr. NUSSBAUM. No, did I personally make a list of every——

Senator KERRY. Could you have made a list? Could you, by memory, make a list of every file that went in the box?

Mr. NUSSBAUM. No, I could not, by memory, make a list.

Senator KERRY. Did you make a list of all the files that went in the box?

Mr. NUSSBAUM. I did not make a list.

Senator KERRY. Did you, subsequent to those files leaving that office, revisit those files at any time in the future?

Mr. NUSSBAUM. No, I did not. A list was made, Senator, by the lawyers who received the files, but I did not make a list.

Senator KERRY. I understand, but the list that they made was a list that was made when they received the files.

Mr. NUSSBAUM. That's correct, Senator.

Senator KERRY. So from the time that the files left you until the time the lawyers received the files, you are actually incapable of saying whether or not the same group of files arrived. You just don't know the answer to that in fact?

Mr. NUSSBAUM. Yes.

Senator KERRY. So when you sit here and say, I can tell the American people that no file left or no file was removed, you don't know that?

Mr. NUSSBAUM. Senator, I know the people I was handling——

Senator KERRY. That's not what I'm asking you.

Mr. NUSSBAUM. Well, I do——

Senator KERRY. You don't know about the files?

Mr. NUSSBAUM. Well, I think I do know, Senator.

Senator KERRY. You're making a total assumption.

Mr. NUSSBAUM. Yes, I'm making an assumption.

Senator KERRY. As a lawyer, in terms of chain of custody, in terms of understanding the security, can you not see the complaint here that is raised by the police? You don't see the complaint?

Mr. NUSSBAUM. They're not complaining that I didn't make up a list—they didn't——

Senator KERRY. They're complaining, Mr. Nussbaum, that they don't know what happened to files. You don't see that, do you?

Mr. NUSSBAUM. No, I don't see that, Senator, because I don't think they're making that complaint.

Senator KERRY. Well, if you don't have a list of files, and the files leave your possession as a counsel, and they subsequently turn up several days later and lawyers then make a list, who is to say? This is what the police are saying, but you don't see that?

Mr. NUSSBAUM. People normally send files to their client or to their client's personal lawyer. He's my client in an official capacity, but—let me——

Senator KERRY. But when they do that, don't they know what files they're sending?

Mr. NUSSBAUM. I knew I was sending over personal files. They don't necessarily make a list, an index at that point. It was necessary for me to do so. I was handing the files to people I trusted, Maggie Williams and the Clinton's, if they wanted to see them, which they didn't.

Senator KERRY. I understand that.

Mr. NUSSBAUM. Those files were then delivered, shortly thereafter, Senator, to the personal attorneys who did make an index of the files as they came in.

Senator KERRY. But you see, counselor, the great issue here. Look, I didn't make up this issue, I didn't create this, nor did any of us here, but we're all trying to sort through to find out what happened.

Mr. NUSSBAUM. Nor did I, Senator.

Senator KERRY. I know that, but you're making a very sweeping, overall statement to the effect that something didn't happen.

Mr. NUSSBAUM. I'll tell you what I'm making it on. I'm making it on the basis of: one, what I did; two, my knowledge of the people to whom I handed the files; three, on the basis of what they're saying, which I trust; and four, on the basis of the fact that the files, when they got to Williams & Connolly, were indexed at that point. I think that is a sufficient basis, Senator—you may not think so, and obviously you're going to disagree—

Senator KERRY. It's not a question of what I think, it's a question of whether or not there is a legitimacy to the questions raised by others whose job it was to have accountability. They're asserting that because of that, they don't have that accountability. And you don't see, or you seem to disavow the legitimacy of that notion of the question of accountability. Let me ask one other question, because I'm going to run out of time. I think the answers probably stand on their face. I don't want to dismiss your ability to say something more if you want to, but I think—

Mr. NUSSBAUM. No, no. The point I was making before is and I don't know if it responds totally to what you're saying: Number one, the search was over. Number two, Mr. Adams knew, as he's testified, that the Clinton personal files were going to be transferred to the Clinton's personal attorneys. Number three, there was no objection to this. Number four, no one asked me to make an index or a log to do this.

Now it's true, sitting back today, if you could foresee the future, if you can say, you know something, you're going to be at a Congressional hearing in the summer of 1995, and this issue would be raised, would it be better to have made such an index or not? Yes. One can argue, sitting here now, that it would have been better, but it wasn't necessary at the time. No one could foresee the future in that way. Remember, Senator, as I said in my statement, Whitewater, this all arises out of Whitewater, the Whitewater file. Whitewater, Senator, was on no one's mind at the time.

Senator KERRY. See the great gap between a lot of folks and you on this, Mr. Nussbaum, and we all have great respect for your legal capacity, but the great gap here is just a sense people have that here was Phil Heymann, here were other people saying, don't do

it this way, do it that way, and then all of a sudden, there seems to be the lack of that accountability. Let me ask another question that was raised by your testimony yesterday. You said that none of the work that was done, and I agree with this, you were representing the Presidency, not just the President as a person, but the Presidency and the President in his official function.

Mr. NUSSBAUM. That's correct.

Senator KERRY. And you've said that the documents that were there were there because they had an official relationship to official things in the public sector.

Mr. NUSSBAUM. The personal files were needed for official purposes, yes.

Senator KERRY. The personal files were part of the need to be able to answer questions that could arise by virtue of the President's need to have public disclosure that involved certain personal information?

Mr. NUSSBAUM. They were needed for functions that were virtually completed or had been completed at the time of Foster's death.

Senator KERRY. All functions, this is what I want to understand, you're saying all functions were completed at the time of Mr. Foster's death?

Mr. NUSSBAUM. The only thing that remained, as I recall, is a signature was needed for the blind trust, but all other of those functions had been completed.

Senator KERRY. So you're saying that even though the President was still President, you were still Counsel, and all of these issues of disclosure and public concern were on-going, the fact that Vince Foster died merited all of those files being transferred to personal lawyers?

Mr. NUSSBAUM. No. It was a combination of things. It was the fact that Vince Foster died, and he had the most knowledge of these matters. He had been working with them. He had been working, excuse me, with personal lawyers on these matters, and these matters, for the time being, at least, had come to a conclusion and I felt in the future that—

Senator KERRY. Why wouldn't you reassign that to another counsel in the office?

Mr. NUSSBAUM. Because, well, that was a possibility, but Foster was the one who had the knowledge. The only other person who had significant knowledge with respect to this matter was Bob Barnett of Williams & Connolly. I just felt it best at this point, with Foster dead and with these things completed now, the financial disclosure, the tax returns, blind trust completed that, in the future, let Bob Barnett just handle these things. We didn't have anybody like Vince who had this kind of knowledge, and I made that judgment.

Now it's true, Senator, I could have made a decision, let Steve Neuwirth get up to speed on all these personal matters, let somebody else get up to speed, so they could assist in these official functions. I just didn't want, my feeling was sort of overwhelming that I just didn't want us to be working anymore not on these official matters which required the use of personal files. We were still going to assist in the future, but I wanted the bulk of the work now to be done by Barnett and people outside the office.

Senator KERRY. The distinction was really the on-going relationship that Vince Foster had had with those issues?

Mr. NUSSBAUM. Yes.

Senator KERRY. At this point, you saw a juncture of transition?

Mr. NUSSBAUM. Correct. He had knowledge, which he had before he became Deputy Counsel. His knowledge base was now gone with his unfortunate death.

Senator KERRY. Fair enough.

Mr. NUSSBAUM. I made that judgment. That was the judgment I made and I acted on that judgment.

Senator KERRY. I understand. Fair enough. Thank you.

Thank you, Mr. Chairman.

Mr. NUSSBAUM. Thank you, Senator.

The CHAIRMAN. Let me make an observation, if I might, and ask the White House representatives. Yesterday, or the day before, a request was put forth by Senator Bond. He renewed it as it related to the mainframe and those materials that could be obtained from it. White House Counsel indicated that they wanted a letter from us and that they had informally agreed and assured us that they were going to do this. It is relevant at this point because there's a question about missing indices, and whether they can be retrieved it by various techniques.

This relates to the issue that Senator Kerry raised concerning the question of what documents were distributed.

Mr. Nussbaum, I don't see how you are in a position to know that all of the documents were thereafter turned over to various people because you are not the custodian and did not have the absolute ability to control the documents. You have indicated that you had trust and confidence in various people, but that is at issue here, and certainly Mr. Heymann was concerned about, or the notes indicated that he was concerned about the distribution.

We are trying to find out whether the mainframe can produce the indices that Ms. Gorham seems to indicate were not there.

Now we have gone on record by sending a letter from the Committee. We would like to know if you're going to undertake this, and if you're going to have the FBI do it. We have every reason to believe you are, but I think we're entitled to an answer this afternoon. Otherwise, we have to do other things, but if we could get that from a representative of the White House, I would be very appreciative.

Senator Murkowski.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Thank you, Mr. Chairman.

Might I inquire as to the time I have available?

The CHAIRMAN. It has started, 10 minutes.

Senator MURKOWSKI. Thank you.

Mr. Nussbaum, I welcome you to the Committee. You look rather comfortable in that chair, although I suspect you've had enough of it by now.

I want to raise a number of issues in connection with your search of Mr. Foster's office on July 22, 1993. I would ask that Mr. Foster's briefcase be carried down to the witness stand and made available at this time.

Now, in your deposition, you indicated on pages 221 and 222, and I quote:

I believed I had emptied the briefcase of all the files. I don't remember seeing anything else in the briefcase. I didn't see scraps of paper, I didn't remember seeing scraps of paper in the bottom of the briefcase. By reaching in, I felt I had emptied the briefcase of all its files.

Mr. Nussbaum, would you identify the briefcase in question?

Mr. NUSSBAUM. Let me get my briefcase out of the way, Senator.

Mr. MURKOWSKI. That's fine.

Mr. NUSSBAUM. We don't want to confuse two briefcases.

Mr. MURKOWSKI. Do we have the other briefcase there?

Mr. NUSSBAUM. This is it, Senator.

Mr. MURKOWSKI. Do you recognize that briefcase?

Mr. NUSSBAUM. Yes, Senator, I recognize this briefcase.

Mr. MURKOWSKI. Is that Mr. Foster's briefcase?

Mr. NUSSBAUM. Yes, this is Mr. Foster's briefcase.

Mr. MURKOWSKI. Do you maintain the version of your search of the briefcase and basically what you saw? Having the briefcase does not bring back any reflection on finding a note or seeing anything, so everything stands as is, right?

Mr. NUSSBAUM. Everything stands as is, Senator.

Mr. MURKOWSKI. Do you recall whether you actually looked inside the briefcase, looked all the way to the bottom? I wonder if you would show us how you think you may have satisfied yourself that there was nothing in the briefcase?

Mr. NUSSBAUM. What I did is I took the briefcase from behind me, pulled it to the side of me—

Mr. MURKOWSKI. Were you sitting down or standing up?

Mr. NUSSBAUM. I think I was sitting down or half-sitting.

Mr. MURKOWSKI. Can you show us kind of how you, just pick the briefcase up. We're interested in knowing how you looked in it to ascertain that it was empty?

Mr. NUSSBAUM. Sure, Senator. We'll do this again.

Mr. MURKOWSKI. That's fine, you're doing fine.

Mr. NUSSBAUM. The briefcase was against the wall—I'm not speaking into the microphone—was against the wall. I reached back, I brought it up to me, to my side, I then reached in, and I saw it was full of files, I then reached in, picked up the files, and put them on the desk.

Mr. MURKOWSKI. How many files were there, do you recall?

Mr. NUSSBAUM. A number, I don't recall.

Mr. MURKOWSKI. Did you make two trips or did you get it all in one?

Mr. NUSSBAUM. I may have made two trips. I may have. I think I did make two trips. I, you know, it's vague, but I reached in, pulled the files up, put them on the desk, I glanced down and it was clear to me that I removed all the files. Then I just turned to describing the files. To answer your question, I don't remember looking back and looking into the bottom of the briefcase.

Mr. MURKOWSKI. Did you ever move the briefcase up off the floor?

Mr. NUSSBAUM. I don't remember doing that.

Mr. MURKOWSKI. As far as you remember, you left it on the floor and you just pulled out the files on a couple of trips?

Mr. NUSSBAUM. That's correct.

Mr. MURKOWSKI. Have you looked into the briefcase to see if there's anything that would obstruct notes that were found later as we——

Mr. NUSSBAUM. Have I looked into it when? Did I look into it just now?

Mr. MURKOWSKI. Well, would you look into it now and satisfy the Committee that it's a pretty clean briefcase, it has a divider that's sewed to the bottom?

Mr. NUSSBAUM. But what happens, as you know, Senator, it sort of slams shut.

Mr. MURKOWSKI. Yes, but to get anything out, you have to open it up.

Mr. NUSSBAUM. It doesn't stay open, it slams shut. So that may well have happened when I pulled out the files.

Mr. MURKOWSKI. OK. So you're not sure then whether or not you looked directly into the bottom of the briefcase?

Mr. NUSSBAUM. That's correct.

Let me say this to you, Senator, please.

Mr. MURKOWSKI. Sure.

Mr. NUSSBAUM. I know you've been very kind and gentle in your questioning, Senator, but let me just say this.

Mr. MURKOWSKI. But my time's running, go ahead.

Mr. NUSSBAUM. I don't know if you were here yesterday when I said this because I recognize you're very busy and everybody comes in and out, but Senator, there's no one in the world who wanted to find those scraps of paper more than me.

Mr. MURKOWSKI. OK.

Mr. NUSSBAUM. I described a conversation with Lisa Foster yesterday, how important it was for us to know. I would have been delighted—delighted is a bad word again, I used it yesterday—to find a note on that day, Senator. So there was no effort to avoid looking into the bottom or finding those scraps of paper. It would have pleased me to no end, and I think it would have made it easier for Mrs. Foster if, before the funeral, which took place the next day, we would have found those scraps of paper, Senator.

Mr. MURKOWSKI. All right. Let me continue, Mr. Nussbaum.

For the past 3 weeks, this Committee's heard testimony from numerous witnesses concerning the handling of that particular briefcase on the 22nd. Bill Burton, Mack McLarty, former Chief of Staff, told this Committee on Monday that while he was standing behind you, when you were sitting at Mr. Foster's desk, and after you had taken the files from the briefcase, he could see a yellow Post-it paper, that's that sticky stuff, yellow, and paper clips in the briefcase. He could see it standing behind you, even though, as you indicated, that briefcase kind of does close. So it's obvious you overlooked it.

Further, FBI agent Scott Slater told us that you had pulled the briefcase apart somewhat and held it up to everyone in the office to show that it was empty. Do you remember that?

Mr. NUSSBAUM. No.

Mr. MURKOWSKI. No recollection at all?

Mr. NUSSBAUM. I've no recollection of that at all.

Mr. MURKOWSKI. You can not recreate something you don't remember.

How about Park Police Sergeant Peter Markland, who told this Committee that you spread the briefcase apart after the files were removed, tilted the briefcase, and announced to the people who were present that the briefcase was empty? Do you remember that?

Mr. NUSSBAUM. No, I don't remember that.

Mr. MURKOWSKI. So you can't recreate for us how that happened?

Mr. NUSSBAUM. That did not happen.

Mr. MURKOWSKI. Yet, the statement was made that it did happen.

Mr. NUSSBAUM. He also made a statement with respect to where people were located in the room, which was clearly wrong.

Mr. MURKOWSKI. You don't remember anybody being located in the room?

Mr. NUSSBAUM. No—yesterday, a diagram was shown to me by Detective Markland sort of positioning people in the room and he was clearly wrong as to where people were positioned in the room. He made an honest mistake about that. He's making an honest mistake I presume about this.

Mr. MURKOWSKI. A Commander of the Inspection Services of the Park Police, Robert Hines, agreed with Captain Hume's statement. He also remembers you looking into the briefcase. He indicated that if he was searching the briefcase, or if any other police official was searching the briefcase, the scraps of paper would have been found, and Commander of Inspection Services of the Park Police, Robert Hines, agreed with Hume's comment that, quote, "Our oldest, blindest detective would have found that note." But you have no recollection of any of these witnesses who said that you opened the briefcase, you spread the briefcase, you made a reference to the fact that nothing was in it, is that correct?

Mr. NUSSBAUM. Yes.

Mr. MURKOWSKI. Now, the thing that's rather extraordinary, and you have to admit it's perhaps coincidental, but just about every law enforcement official appears to have seen you look at the briefcase, indicate that the briefcase was empty, yet your testimony states that you didn't see any scraps of paper in the briefcase on the 22nd. You don't recall the law officials making these general statements?

Mr. NUSSBAUM. I just told you, Senator, I would have been delighted to have seen the scraps of paper. I wanted to find it more than anyone else on the earth at that time. We had a funeral the next day. People did not know why Vince died. There was absolutely no reason for me not to want to discover the scraps of paper, to put them together, to see that handwritten list. I wanted it, I wanted it for my sake, I wanted for the White House's sake, I wanted it for Lisa Foster's sake.

Mr. MURKOWSKI. I understand.

Mr. NUSSBAUM. So all the speculation and all this paranoia, if I can use it, is misconceived. It's wrong.

Mr. MURKOWSKI. Well, I appreciate your recollection of it as compared to the recollection of other witnesses before the Committee who claim obviously a different version and have given testimony to this Committee of such.

Now, we've had testimony from Mr. Foster's secretary that she saw something yellow in the briefcase. Bill Burton saw yellow paper in the briefcase. I can't understand how, you know, cavalierly, we could have a situation where you put your hands in the briefcase, took out the files, and at some other time didn't look back in the briefcase. You didn't allow anybody else to look in the briefcase. Nobody else asked and you didn't.

Mr. NUSSBAUM. No, I didn't prevent anybody from looking at the briefcase.

Mr. MURKOWSKI. Nobody asked?

Mr. NUSSBAUM. Nobody asked. If somebody said, open the briefcase, I want to look in the bottom, of course I would have done that, absolutely I would have done that. I had no reason not to do that, Senator.

There was no conceivable reason why I would not want to find those scraps of paper that day. That's why all these recollections are almost beside the point. Some of them are inaccurate, I believe, but they are besides the point. I wanted to find a note that day. I wanted to find scraps of paper that day. And when I found them, or when Steve Neuwirth found them on the 26th, we were happy because now we had an insight into what was bothering Vince, and I would have liked that insight before I flew away to Arkansas the next morning, the 23rd, to go to Vince's funeral.

Mr. MURKOWSKI. My last question. Mr. Nussbaum, you remember Michael Spafford, the Foster family attorney, told this Committee that on the afternoon of the 22nd, after law enforcement officials had left Mr. Foster's office, that Cliff Sloan had picked up the briefcase, was looking into it, and told you that there were scraps of paper in the briefcase and he testified that you essentially said, quote, "Don't worry about it." Now, I gather you don't remember that conversation either?

Mr. NUSSBAUM. Nor does Cliff Sloan, and Cliff Sloan is a person with a photographic, a phonographic memory, I'll use the word phonographic memory, as well as photographic memory, and he I think would remember that conversation. Obviously memory is playing tricks on some of us.

Mr. MURKOWSKI. And it is on Mr. Spafford as well?

Mr. NUSSBAUM. I don't think it's playing tricks on Mr. Sloan and myself; I think in this instance, it's playing tricks on Mr. Spafford, who is a good, decent, and honest person and I'm sure he's telling his best recollection as he sees it. Neither Sloan nor I remember that conversation.

Mr. MURKOWSKI. In your opinion, is the note that was found, Mr. Foster's note, is that a suicide note, or does that note really reflect on the circumstances that were bothering Mr. Foster with regard to the Travelgate issue, in your best opinion?

Mr. NUSSBAUM. In my best opinion, it's a list of things that were clearly bothering Mr. Foster in this timeframe. It reflected a lot of anguish, especially the last line and the reference to The Wall Street Journal editorials. It's probably not a suicide note, but it is a list of things reflecting despair and anguish. It is the kind of thing, that if I had found on the 22nd, and believe me, I wish I had, if I had found on the 22nd, I would have turned over immediately to law enforcement authorities.

Mr. MURKOWSKI. There was a period of time when you found the note and kept the note.

Mr. NUSSBAUM. That's correct.

Mr. MURKOWSKI. So you really didn't mean to turn it over immediately because you kept them over night?

Mr. NUSSBAUM. I would have turned it over immediately on the 22nd, because that was my agreement with law enforcement authorities if we found something like that to do it. But when it was found on the 26th, and I saw it, I believed that Lisa Foster and the President should have an opportunity to see it because, as I said, common decency, and I didn't see any harm in waiting 24 hours before turning it over and letting them see it before it gets into the press.

Mr. MURKOWSKI. Well, but it clearly wasn't immediate, because you found it Monday early afternoon and didn't turn it over until late Tuesday?

Mr. NUSSBAUM. Correct, Senator, for the reasons——

Mr. MURKOWSKI. And finally——

Mr. NUSSBAUM. —for the good and sufficient reasons I gave.

Mr. MURKOWSKI. I understand.

Finally, in your best opinion, knowing Mr. Foster, this in your opinion, the note in question was not a suicide note?

Mr. NUSSBAUM. Yes, it was not a suicide note. It doesn't say, goodbye cruel world.

Mr. MURKOWSKI. Thank you.

Senator BOXER. Mr. Chairman, may I make a point of procedure?

The CHAIRMAN. Yes.

Senator BOXER. May I ask you?

The CHAIRMAN. Certainly.

Senator BOXER. At what point does Mrs. Foster get back that briefcase? Maybe I'm the only one who's a bit offended by this, but I have to tell you, Mr. Chairman, if that was a loved one of anyone of ours, and see this thing coming out that he held and he touched and he brought to work everyday, and it's brought out here pretty clearly to make the front page of the paper, I just, I'm offended by it, and I wonder at what point are we through with this for our work, and when it can go back to her, if Mr. Starr is finished with it, Mr. Chairman?

Mr. MURKOWSKI. May I respond? Let me make the comment that I think this is a critical piece of evidence.

The CHAIRMAN. No, no. Senator, Senator, please.

Let me make the observation that a writing which may have reflected on why Mr. Foster took his life, and certainly this writing demonstrates some distress on his part, was the object of an intensive concern by family, by loved ones, by people who worked with Mr. Foster.

It is obvious, given the fact that there has been testimony and that three people observed something yellow, paper, in the bottom of the briefcase, that there would be concern if we are conducting an intensive search, and one had been, in the review and concern for this writing, an indication it turns up in this briefcase.

What was the briefcase like? Were there compartments? Was there something where things could be under? I didn't know until we saw it, and even after the first day, I had not made a careful

review of what it looks like. Is it likely that there could be paper, yellow paper at the bottom?

These are all things, and I am not attempting to make a conclusion, but I think it is absolutely perfectly reasonable, and it would be unreasonable not to expect that we would look at it, examine it, and that the very person, in this case it's Mr. Nussbaum, who was the person who removed documents from it. Others can testify as to what they saw from a distance, but they wouldn't, that he be asked to explain how it is he did not see the papers.

Now, that's reasonable. I don't think that it approaches, it's not macabre like, and I think that we should continue on. But that's my position on it, and I don't think that there's been anything extraordinary done here today, but an attempt to ascertain the facts.

Let me add this. I heard Mr. Spafford. I'm trying to keep and be objective and I think we're doing a good job on a bipartisan basis. And let me tell you, Senator Kerry did not send up their softballs. He was asking very probative, important questions, and I think a lot of the Members on both sides, Democrats and Republicans, have been looking to do that. This is important. How could these, we understand certain recollections can be lost.

Mr. Spafford, the Foster representative who took the documents, testifies that he clearly heard Mr. Sloan say that there's paper in the bottom of that bag. Bernie, there's paper in the bottom. And Mr. Nussbaum, Mr. Spafford says, we'll look at it later, and that's buttressed by the testimony of the secretaries who indicate that there was paper, and Mr. Burton who said he saw some paper. That's why it becomes important. So I would hope we can continue.

Senator BOXER. Mr. Chairman, I'm not going to debate any of that with you. You stated it well.

The CHAIRMAN. All right.

Senator BOXER. All I'm saying is, as one Member of the U.S. Senate who sits here, I hope at some reasonable point, that the Foster family gets back this personal effect of a loved one.

The CHAIRMAN. I'm certain that will be the case and the Senator's observations are certainly noted. We don't need unreasonable displays of anything, whether it's the briefcase or any other thing, so we note that.

Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I would just say to Senator Boxer, my assumption is that this phase of the hearings will conclude today. I think that is the intention, and I assume then the briefcase will be returned from whence it came to the Committee, which was from the Independent Counsel, as I understand it. Now whether they will prepare to return it to the family, I don't know, but I do think that I can understand the trauma this creates for the family.

I must say, I think probably, Mr. Nussbaum, you're the most relevant person we've had yet before the Committee to discuss the handling of the briefcase, although it has been waved around here quite a bit prior to today.

Senator Bryan.

OPENING COMMENTS OF SENATOR RICHARD H. BRYAN

Senator BRYAN. Thank you very much, Senator Sarbanes.

Mr. Nussbaum, I don't intend to ask any questions about the briefcase.

If I could get you to focus your attention during the time period of July 21, July 22, when you were making the decision as to how the review of the documents that were in Mr. Foster's office was to be conducted.

It is my sense that you were getting some conflicting requests. You had Mr. Quinn, who made a forceful presentation that I'll characterize it as the most conservative view in terms of what access should be permitted because of the policy considerations of national security, attorney-client, sensitive documents, all that issue. You had Mr. Heymann's request, which I would put on the far side of the other spectrum, that they ought to be able to read the first page of each one of these documents. And you are wrestling with this decision. Have I characterized the state of events, and the issue as you saw it at that time accurately? Is that essentially where you were?

Mr. NUSSBAUM. That's exactly where I was.

Senator BRYAN. OK. You began to tell us the other day, and I want to just ask a couple of questions before yielding my time back to Mr. Ben-Veniste, but you're talking about your legal responsibility and you're talking about the doctrine of waiver.

Mr. NUSSBAUM. Yes, sir.

Senator BRYAN. Now, I grant you that doesn't have the pizzazz of briefcases and all that sort of thing, but it strikes me as being very, very relevant. The doctrine of waiver, which I gather you're suggesting that if you show part of the document, you may very well have waived your right to maintain the confidentiality or the privilege of the balance of the document.

Would you discuss that a little bit, and let's talk maybe lawyer-like, because I'm sure we're going to have others who share a different perspective of the legal position, namely that you could enter into some kind of an agreement and protect yourself. But would you embellish upon that a bit?

Mr. NUSSBAUM. Yes, Senator, I would be glad to. As I mentioned yesterday, the doctrine of waiver, which is that if you show something to somebody, you lose whatever privileges attaches to that document, and indeed, even to the subject matter of the document. The law with respect to waiver is both very strict, namely, you lose everything, and very uncertain. You're not quite sure how much you can do and not do before waiver triggers.

Senator BRYAN. Can I just interject here, in a very crude analogy, I mean, the privilege against self-incrimination, in other words, you cannot go partially—

Mr. NUSSBAUM. That's correct.

Senator BRYAN. —into the area in answering questions without having waived the privilege entirely, as I understand it.

Mr. NUSSBAUM. That's exactly correct, or with attorney-client privilege. You cannot just partially disclose a portion of a document or of a conversation without waiving not only the entire conversation as to the entire document, but indeed, perhaps as to the entire subject matter covered by this document. In other words, there

may be other documents covering this subject matter, there may be other communications covering this subject matter.

So when you waive it is a tricky thing, and two, how much you're waiving is even trickier at times. That's what a lawyer thinks about when he's faced with a request for somebody to look at a part of or the first page of various documents. And I was extremely concerned about that at the time.

Now, remember, what was being asked for was to look for a suicide note or a similar such document. I felt I could accomplish their aim, namely, looking for a suicide note or some similar such document, without running the risk of triggering this law of waiver, which I would have done if I had shown them the front page or a portion of each of the documents in the office.

Senator BRYAN. And let's be clear. The implication of waiving would be the entire document?

Mr. NUSSBAUM. That's correct. The entire document, even more than the entire document, it could be other documents concerning the same subject matter. It depends.

Now with respect to this issue of agreement, which has come up in Mr. Heymann's testimony, I was also aware of law, and I mentioned some cases yesterday, actually, the Westinghouse case in the Third Circuit, and there are other cases similar to that, in which people have attempted to enter into agreements with Government agencies, such as the Department of Justice or, in most cases, the SEC, in which they say, we will show you a document or a report, or even a portion of a document, but we want your agreement that this is not a waiver, and the agency will say, yes, we'll enter such agreements, it is not a waiver, the kind of thing Mr. Heymann was talking about.

But lo and behold, when you go to court, if there's litigation later, the court says, no, no, no. Once you showed a portion, that agreement doesn't control as to whether you waived or not. Once you disclosed a confidential conversation or a privileged conversation, then the attorney-client privilege or the work product privilege does not apply, and therefore you've waived entirely. An agreement does not and cannot protect you against waiver. That is my understanding of the law then. It is my understanding of the law now.

We never discussed agreements actually with respect to waiver, at least I don't remember anything like that at this point, but nonetheless, I had a concern that even if we did it in a consensual fashion with an agreement, it still would not protect me or protect the clients, not to protect me, it's to protect the client basically with respect to preserving his confidences and his privileges. And I have to say, Senator, having done that, all I did was preserve the ability of the President and the First Family basically to maintain privileges if they wished.

In fact, later on, they never claimed privilege. I preserved their right to do it. I didn't waive it for them by showing documents, but they determined ultimately not to claim privilege and every document that was requested by law enforcement was turned over both in the immediate aftermath of Vince's death, as well as later on when the Whitewater investigation arose.

Senator BRYAN. So the point that you're making, although Messrs. Heymann, Margolis, and others disagreed with your analy-

sis of how much could be shown, and they disagreed with the procedure that you chose to adopt, but ultimately the no-harm, no-foul concept, they got everything, no privilege was asserted, no claim was exercised, and the documents were shown to the appropriate law enforcement authorities?

Mr. NUSSBAUM. That's exactly correct, Senator.

Senator BRYAN. I would yield the balance of my time to Mr. Ben-Veniste.

Senator SARBANES. Senator Bryan, if you would yield your time to Senator Kerry, because it was on his round we took a couple of minutes out of.

Senator BRYAN. I would be very happy to do so.

Senator KERRY. Thank you. I just have a couple of questions I want to finish up.

Mr. Nussbaum, is the briefcase still down to your right there? Just identify whether it is or it isn't? Is the briefcase gone?

Mr. NUSSBAUM. I don't have it, Senator.

Senator KERRY. Where did the briefcase go? I just wanted—I thought it was still there. I would like it just to go back and stand, sit beside him if it would. If you'll put it down there. Could you put it as nearly approximate to the place where it was when you reached for files on that day?

Mr. NUSSBAUM. Yes.

Senator KERRY. Is it there now?

Mr. NUSSBAUM. It's there now, yes.

Senator KERRY. OK. Could you just leave it as if it was standing by itself and you're about to reach down?

Mr. NUSSBAUM. Yes.

Senator KERRY. Now, let me ask you, without moving your hands or opening it or anything or doing anything to it, would you look at the briefcase and tell me whether or not you can see that it's empty? Could you just look at it and tell me?

Mr. NUSSBAUM. If I look at it now, I cannot see the bottom of the briefcase.

Senator KERRY. Why is it that you can't tell me whether it's empty or not right now?

Mr. NUSSBAUM. Because the briefcase, the flaps shut.

Senator KERRY. So as the briefcase is standing there now, it is empty?

Mr. NUSSBAUM. It is empty, I know that.

Senator KERRY. But it is shut.

Mr. NUSSBAUM. But it is shut.

Senator KERRY. You can't tell it is empty by looking at it?

Mr. NUSSBAUM. No, I couldn't tell you right now if there were 27 scraps of paper at the bottom of the briefcase.

Senator KERRY. So the briefcase is now, if you pulled the last file out, is that what happens to the briefcase, it basically shuts?

Mr. NUSSBAUM. That's correct, Senator.

Senator KERRY. Now, I want you to look, I want you to again, would you reach down and show me exactly how you reached and brought the document up again?

Mr. NUSSBAUM. I would be looking at my audience when I was conducting the search.

Senator KERRY. Were you talking at the time?

Mr. NUSSBAUM. Yes, I was talking.

Senator KERRY. As you are now?

Mr. NUSSBAUM. I would say, look, I'm pulling over Vince's briefcase. I would sort of be describing what I was doing. There are files in it, and I'm reaching in and pulling out these files. I would say something like that. And here——

Senator KERRY. Like that. I want you to now—that's the way you did it. The way you just did it now?

Mr. NUSSBAUM. That's correct.

Senator KERRY. I want you to once again inspect the bottom, just to make certain that there's no paper in there. Would you do that? Look in the bottom. Right. No, I don't want you to pick it up. Just leave it down there. Can you see it from where you are? Do you have to open it, is that correct?

Mr. NUSSBAUM. Yes, I had to open it.

Senator KERRY. Physically reach in and open it in order to see?

Mr. NUSSBAUM. I had to physically reach in and open it and look down to see if there's paper there.

Senator KERRY. It is your testimony that you have no recollection of actually doing that that day?

Mr. NUSSBAUM. That's correct.

Senator KERRY. You simply pulled the files out?

Mr. NUSSBAUM. I remember just simply pulling the files out, realizing, or feeling in effect, or looking, glancing, that the files were all out and then, as you can see, the briefcase apparently shuts by itself.

Senator KERRY. Now, I notice that last time you looked in it, you put on glasses in order to look?

Mr. NUSSBAUM. Well, I just use glasses for reading sometimes.

Senator KERRY. OK, I was just curious.

Mr. NUSSBAUM. Yes, these are reading glasses. When I put on glasses, I was looking to see Vince's name, actually, which is in the briefcase.

Senator KERRY. In order to read the name?

Mr. NUSSBAUM. To read the name, yes.

Senator KERRY. Fair enough, right.

Thank you very much. I don't have any further questions.

The CHAIRMAN. Senator Frist.

OPENING COMMENTS OF SENATOR BILL FRIST

Senator FRIST. Thank you, Mr. Chairman.

Mr. Nussbaum, I would like to ask you a couple of things continuing with the discussions about what occurred during the document review in Mr. Foster's office on Thursday, July 22.

Many of the things that you said, and have said this morning, and also in your deposition, agree with what Mr. Spafford has told us. However, there is that one key point that's been referred to about which you disagree.

First, Mr. Spafford testified that during the course of the document review, you emptied all of the documents from Mr. Foster's briefcase and you said something like, and I quote, "I have all the files and the documents from the briefcase." Second, Mr. Spafford states that after the document review, everyone left the room except you, Mr. Spafford and Mr. Sloan. And then Mr. Spafford very

clearly states that Mr. Sloan told you that there were scraps of paper at the bottom of the briefcase, and that you replied something like, and again I quote, "Don't worry about it, we're going to have to go through all of this later."

So my first point is that after you had taken the papers out of Mr. Foster's briefcase, did you notice anything at the bottom of the briefcase?

Mr. NUSSBAUM. No, Senator, I did not.

Senator FRIST. Did you notice any scraps of paper at all in the briefcase?

Mr. NUSSBAUM. No, I did not.

Senator FRIST. Was there a point after the document review was completed that only you, Mr. Spafford, and Mr. Sloan were in Mr. Foster's office?

Mr. NUSSBAUM. That's possible, yes. That's possible because when the law enforcement people left, I certainly stayed behind, Mr. Sloan stayed behind, and Mr. Spafford was putting his papers together, the papers I handed him, namely, the personal Foster papers, so it's quite possible the three of us would have been there alone.

Senator FRIST. So the three of you could have been in the room together afterwards?

Mr. NUSSBAUM. Yes.

Senator FRIST. Now did Mr. Sloan say to you that he had seen scraps of paper in Mr. Foster's briefcase?

Mr. NUSSBAUM. No, Senator, he did not.

Senator FRIST. Did you say to Mr. Sloan, in substance, and I'm quoting Mr. Spafford, "We'll deal with that later," or, and I quote again, "We'll look at it later."?

Mr. NUSSBAUM. No, Senator, I did not.

Senator FRIST. And so now you're saying you specifically did not say it, where before you were saying you don't remember saying it?

Mr. NUSSBAUM. I think it's something I would remember. That's why I'm saying I did not say it. I think it's something I would remember, I think it's something Mr. Sloan would remember.

Senator FRIST. So you're denying that it did happen?

Mr. NUSSBAUM. Yes, I'm denying that it did happen. Obviously, I'm giving you the best of my memory, but I'm denying it happened.

Senator FRIST. I'm asking you all this obviously because Mr. Spafford testified that he is so certain, using the word, certain.

Mr. NUSSBAUM. Right. See, the tricky thing—I have great respect and affection for Mr. Spafford. I don't believe Mr. Spafford is knowingly coming before this Committee saying something he doesn't believe. I believe he believes what he's saying. This is one of those anomalies, to use a word that I've heard here, just that memory is playing tricks on somebody as a result of the discovery of this note on July 26. It may be playing tricks on Mr. Sloan and myself. But I don't think so. I think here memory's playing a trick on Mr. Spafford. But I'm not suggesting he's not honest.

Senator FRIST. But you're saying it did not happen?

Mr. NUSSBAUM. But I'm saying it did not happen, yes.

Senator FRIST. The conflict, again, goes back to the testimony from Mr. Spafford. His specific testimony, and I did the questioning, was the following:

Senator FRIST. At this point in time, did Mr. Sloan approach Mr. Nussbaum about the briefcase?

Mr. SPAFFORD. At some point in time, I was talking to Mr. Nussbaum and at some point in time, Mr. Sloan had the briefcase in his hand. So I didn't see him pick it up. He made the comment at that point in time that there appeared to be scraps in the bottom of the briefcase.

The CHAIRMAN. Was he standing?

Mr. SPAFFORD. Yes, he was.

Senator FRIST. Are you certain that Mr. Sloan, during this period, told Mr. Nussbaum that there were scraps of paper at the bottom of the briefcase?

Mr. SPAFFORD. I don't recall the exact words, but words to that effect.

Senator FRIST. Did Mr. Sloan actually have the briefcase in his hands when he stated to Mr. Nussbaum that there were scraps of paper in the bottom of the briefcase?

Mr. SPAFFORD. Yes, sir.

Senator FRIST. Again, I know we're using your briefcase, which isn't the original briefcase, but could you use your briefcase, and to the best of your recollection show how Mr. Sloan showed Mr. Nussbaum the briefcase?

Mr. SPAFFORD. He was standing, and he had it by the handles. He had it open like this, and he was looking into the briefcase.

Senator FRIST. So he had the handles, opening it up, and he himself was looking into the briefcase. Did he show the scraps of paper to Mr. Nussbaum?

Mr. SPAFFORD. I did not see the scraps of paper. He did not take them out of the briefcase or show them to anyone.

Senator FRIST. What did Mr. Nussbaum say in response to Mr. Sloan's statement and his demonstration that there were scraps of paper in the bottom of the briefcase?

Mr. SPAFFORD. Mr. Nussbaum was sitting on the couch or the sofa at the time, and his comment was something to the effect that we will get to all of that later; we have to look through the materials, and we will look through them later.

Senator FRIST. Were you left with the impression of that statement that, indeed, these scraps would be looked at later?

Mr. SPAFFORD. That's correct.

Senator FRIST. Now, when Mr. Sloan stated that there were scraps of paper there, was Mr. Nussbaum surprised? What was his reaction?

Mr. SPAFFORD. Mr. Nussbaum, as near as I can recall, did not have a reaction. It was an off-the-cuff remark by Mr. Sloan to which I attached very little significance at the time, and it appeared that Mr. Nussbaum attached very little significance to it as well. We then proceeded to talk about the fact that he was going to go through the office, and if he found any personal effects, other personal effects of Mr. Foster, he would have those delivered to my office.

Senator FRIST. Say once again what happened to the briefcase after the statement was made in the exchange between Mr. Sloan and Mr. Nussbaum.

Mr. SPAFFORD. I'm not certain what Mr. Sloan did with the briefcase because I turned my attention to Mr. Nussbaum and we continued our conversation, so I would be making an assumption I don't know.

I go through all of that because he is so specific. It's not just an image, it's a sequence of events. It's an interaction between you and two others in the room and it's vivid, it's in detail and he's certain about it, and it doesn't square with your denying it didn't happen.

Mr. NUSSBAUM. Yet, Senator, as you know, he made detailed notes of that day as the search was going on, and this is not mentioned in his notes. Now, he says he put his notes away at this point, and he also made a memorandum of what happened at the search. I learned that through the hearing. I didn't know it before the hearing. And lo and behold, it's not mentioned in his own memorandum.

Senator FRIST. He said he put his notes away by that point. He was very clear that he put his notes away and at that point was

not taking notes. The problem is, he has this specific sequence of events, one after another.

Mr. NUSSBAUM. But he doesn't convey it contemporaneously, either in his notes or in his memorandum. I'm not saying he doesn't believe it happened. I'm just saying his notes and his memorandum indicate to me, you know something, he may be remembering something honestly that didn't happen. Mike Spafford just may be making a mistake. There's no reason for him, that I know of, to testify.

Senator FRIST. That's the whole point. If he has no axe to grind, he hasn't worked for the Clinton Administration, he's never worked for the Foster's except for a few days before that, that is the whole point, a sequence of events very vivid, very specific, no axe to grind as you said.

Mr. NUSSBAUM. Nor do I have an axe grind, nor does Mr. Sloan have an axe to grind. As I said to your colleague from Alaska, Senator, I wanted to find that note more than anybody. Will you let me finish? I wanted to find that note more than anybody else in the world. I wanted to answer Lisa Foster's question as to why her husband died. I have no axe to grind either.

Senator FRIST. Do you have any theory as to why Mr. Spafford would have made up this very specific sequence of events and describe with certainty?

Mr. NUSSBAUM. No, I don't believe he made it up. I believe, look, I believe that he's not making it up. I believe his memory's playing tricks on him.

Senator let me say this. If that conversation happened, and I made a mistake in effect by not immediately looking at the scraps that Sloan brought to my attention, I would admit it. There's no reason for me not to admit it.

Senator FRIST. I understand.

Mr. NUSSBAUM. Senator, that's my point. There's no reason for me, there's no reason for Sloan not to remember that conversation if we remembered that conversation.

I understand somebody can say, well, Mr. Nussbaum——

Senator FRIST. Let me ask you one more question.

Mr. NUSSBAUM. Let me, could I just finish.

Senator FRIST. If you have another point to make.

Mr. NUSSBAUM. Please, I have another point.

I can understand somebody saying, you know, well, Mr. Nussbaum, if you had that conversation, then since you didn't examine the briefcase or Neuwirth didn't examine the briefcase until 4 days later, it shows how you made a mistake. And I would say, yes, it shows I made a mistake. I would gladly admit that mistake. I've admitted other mistakes, such as not finding the note. I have no reason not to recollect that conversation if that conversation took place.

Senator FRIST. I would like to yield my final minute to Mr. Chertoff.

Mr. CHERTOFF. Mr. Nussbaum, you just indicated, and I understand that your testimony now incorporates your observations from the hearings, but this is very important. You just, in trying to compare your testimony with that of Mr. Spafford, first of all, your testimony is you have no axe to grind, you have no interest in the out-

come of this. Do you really believe you have no interest in the outcome of this?

Mr. NUSSBAUM. Absolutely.

Mr. CHERTOFF. You don't care one way or the other? You don't care how this comes out, how people perceive you and your behavior on the 22nd is not a matter of interest to you?

Mr. NUSSBAUM. Of course that's a matter of interest to me. But my fundamental way of dealing with issues like that, Mr. Chertoff, is to tell the truth. To tell it like I did it, to defend myself when I acted correctly, to admit mistakes when I acted incorrectly. In that way, Mr. Chertoff, then whatever people think, that's the way I want people to know me and think of me, as a person who admits his mistakes and a person who defends his conduct.

Mr. CHERTOFF. Mr. Nussbaum, you attached a lot of significance, you raised the question, in response to Senator Frist, you argued that somehow Mr. Spafford's recollection was devalued because—let me finish—

Mr. NUSSBAUM. I'm sorry.

Mr. CHERTOFF. —because he didn't make a contemporaneous note or he didn't put it in his memorandum.

I want to read you from a part of his testimony that you didn't mention, Senator Frist. It's page 22 of his testimony here July 27, 1995, before this Committee, in response to Senator Frist's question, line 12.

Senator FRIST. When did you first attach significance to that exchange?

Mr. SPAFFORD. The following week I became aware of the existence of the note for the first time, and that it was in the bottom of the briefcase, and that it was in pieces. I made the connection then. I don't recall the exact date, but it was that following week.

Senator FRIST. Do you recall when you first described to someone else what you heard Mr. Sloan say to Mr. Nussbaum?

Mr. SPAFFORD. I had a privileged conversation at that time.

Senator FRIST. Do you know when that time was, or is that sometime the next week?

Mr. SPAFFORD. It was sometime the week of the 26th.

Mr. Nussbaum, that's a pretty contemporaneous report, isn't it?

Mr. NUSSBAUM. If he had such a conversation, the answer is yes.

Mr. CHERTOFF. Do you doubt that he had that conversation?

Mr. NUSSBAUM. No, I don't doubt it. If he says he had a conversation, he had a conversation.

Mr. CHERTOFF. So you will agree then that the record shows that Mr. Spafford, as soon as he learned that there was a writing in the bottom of the briefcase, he told someone about it, right?

Mr. NUSSBAUM. Yes, he told someone about it after he learned there was a writing in the bottom of the briefcase.

The CHAIRMAN. I think it's fair to say that he told one of the lawyers at Williams & Connolly.

Mr. CHERTOFF. Or his own firm, probably.

The CHAIRMAN. Or at his own firm. There was another attorney, and it is privileged, and we're not going into it, but it is his recollection.

Senator Sarbanes.

Senator SARBANES. Senator Moseley-Braun.

OPENING COMMENTS OF SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman.

I understand that counsel has some questions, and in the interest of moving this process along, I would just as soon yield my time to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Mr. Nussbaum, I've been listening to, and puzzling over this issue of the scraps in the briefcase for what seems like months. I would like to review what the testimony has been.

To my recollection, there are three people who say that as of the 22nd, there was some yellow paper in the bottom of the briefcase that they noticed.

The first one is Mr. Burton who testified that standing at your side, he saw some yellow Post-it or some yellow papers in the bottom of the briefcase. The second person who said they observed yellow Post-its was Ms. Gorham, and the way that came about was that Ms. Tripp was very, very interested in trying to find out whether there was any clue as to why Mr. Foster took his life.

Ms. Gorham, on the 22nd, after the police had left the office, had a conversation with Ms. Tripp. In that conversation, Ms. Tripp asked Ms. Gorham, did they search everywhere for the note. Ms. Gorham said yes. What about in the briefcase, asked Ms. Tripp. Ms. Gorham said, the briefcase is empty except for some little yellow stickies.

Did Ms. Gorham, who was very interested in trying to find out what had caused Mr. Foster to take his own life, ask you on the 22nd, Mr. Nussbaum, would you please look in the bottom of the briefcase and see whether those yellow stickies have anything to do with Mr. Foster's death, can shed any light on Mr. Foster's death?

Mr. NUSSBAUM. No, she did not.

Mr. BEN-VENISTE. Mr. Burton did not.

Now we turn to Mr. Spafford. Mr. Spafford testified that he overheard a conversation involving yellow scraps of paper in the bottom of the briefcase. Let's put aside the fact that you do not recall that conversation. But Mr. Spafford was very interested, was he not, in determining what caused Mr. Foster to take his life?

Mr. NUSSBAUM. Yes, he was.

Mr. BEN-VENISTE. Did Mr. Spafford, on the afternoon of July 22, say to you, wait a second, there are yellow scraps of paper in the bottom of this briefcase. Shouldn't we look at these now to see whether they can shed any light on why Mr. Foster took his life?

Mr. NUSSBAUM. No, and the briefcase was also Mr. Foster's personal property, so Mr. Spafford would have had even an interest in that.

Mr. BEN-VENISTE. So the way I see this, Mr. Chairman, is somewhat akin to the notion that something that can be hidden in plain sight. That the people who identified the yellow paper at the bottom of the briefcase, all of whom were intensely interested in trying to find clues to why Mr. Foster took his life, did not associate those yellow scraps of paper with anything that might be meaningful in terms of the investigation into why Mr. Foster took his life. Is that correct?

Mr. NUSSBAUM. That's correct. If they saw the scraps, I wish they would have told me about them.

Mr. BEN-VENISTE. But having seen the scraps, no one associated those scraps with a note or other writing that you were looking for?

Mr. NUSSBAUM. That is true, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Following the search, or during the search, did anyone from law enforcement, including the attorneys from the Department of Justice, request that you produce and maintain an inventory of the files?

Mr. NUSSBAUM. No.

Mr. BEN-VENISTE. So no one made the request that has been talked about here in terms of identifying and maintaining the files from the law enforcement community?

Mr. NUSSBAUM. That's correct. The search was over. The law enforcement authorities knew that the documents would be dispersed in various ways, and no one, no one made a request to produce an index or a log or anything like that with respect to the documents that would be dispersed.

Mr. BEN-VENISTE. All right, now let's turn to the——

Senator DODD. Counsel, of the law enforcement officials there, how many years, are we talking about people who just started with the Justice Department or are we talking about career people?

Mr. NUSSBAUM. You're talking about experienced career and quite respected people.

Senator DODD. How many years are we talking about with the principal lawyers involved?

Mr. NUSSBAUM. Mr. Margolis must be there 30 years.

Senator DODD. So these are seasoned, professional people with long-standing involvement with these matters?

Mr. NUSSBAUM. Seasoned professional people right at the top of the career service in the Department.

Senator DODD. Neither of them asked for any kind of listing?

Mr. NUSSBAUM. Neither of them asked for any kind of listing.

Mr. BEN-VENISTE. Thank you, Senator.

Let me just return to the question of Mr. Spafford. He had handwritten notes and his testimony was that he put his notes away as he was packing up, and then overheard the conversation he testified about. But he also testified that that evening, when he came back to his office, he took those notes and he made those notes the basis of a typed memorandum recounting the important things that had occurred. That memorandum has been made a part of the evidence in this record.

I think, out of fairness, to complete the area of inquiry that Senator Frist had raised, it is correct that in completing his typed notes that evening, Mr. Chairman, that Mr. Spafford did not include any reference to having overheard this conversation.

So trying to correlate the two different versions together, that on the one hand of Mr. Spafford, and that of you and Mr. Sloan, at any event, I think it is fair to say that neither—that Mr. Spafford did not indicate to you that he saw any significance to the scraps of paper, nor did he view the significance of the scraps of paper to rise to the level of including it in his typed memorandum.

Mr. NUSSBAUM. That's correct, apparently.

Mr. BEN-VENISTE. Now, let me again bring your attention to that evening following the search. You had a conversation with Mr. Heymann and while you and Mr. Heymann differ about the specif-

ics of the conversation, is it fair to say, Mr. Nussbaum, that you perceived that Mr. Heymann was not happy?

Mr. NUSSBAUM. Yes.

Mr. BEN-VENISTE. And he felt that the procedure that you had employed was not one which was in the best interests of the White House?

Mr. NUSSBAUM. Yes, that was his feeling.

Mr. BEN-VENISTE. Did Mr. Heymann, that evening, in his conversation with you, at any time say to you, look, Bernie, I disagree with what you've done, here's what I want you to do. I want you to get all those files that were in that office that day, I want you to get them brought back to the White House, I want you to get the personal files of the Foster family, bring those back, I want you to get the personal records, the financial records of Mr. and Mrs. Clinton because he indicated he understood they were going to be dispersed, I want you to get them back, put them back in Mr. Foster's office. Did he have any conversation, in words or substance, along those lines with you?

Mr. NUSSBAUM. No.

Mr. BEN-VENISTE. In the days following, even up to the point where the note was discovered, now we're on the 26th and 27th, when you advised Mr. Heymann, did Mr. Heymann say to you, Bernie, I want all of those files put back where they were?

Mr. NUSSBAUM. No, nor did anyone else in the Justice Department say that.

Mr. BEN-VENISTE. Finally, you understood, did you not, that in the context of this note, questions would be raised regarding, for example, the issue of, according to Mr. Foster, whether the FBI had lied in connection with the travel investigation?

Mr. NUSSBAUM. Yes.

Mr. BEN-VENISTE. Did you understand that, in fact, an investigation was opened into that very issue, which was conducted by the Office of Professional Responsibility?

Mr. NUSSBAUM. Yes.

Mr. BEN-VENISTE. I have nothing further.

The CHAIRMAN. Senator Bennett.

OPENING COMMENTS OF SENATOR RICHARD F. BENNETT

Senator BENNETT. Thank you, Mr. Chairman.

Staff has prepared a summary of what they see as contradictions between Maggie Williams' testimony and the other witnesses. And I would ask unanimous consent that it be included in the record.

MARGARET WILLIAMS CONTRADICTIONS

	WILLIAMS	OTHER WITNESSES
1	<p>MW did <u>not</u> remove folders from the White House Counsel's suite on July 20. "I just don't remember taking anything in or taking anything out of the office." (MW Dep. 83)</p> <p>"I took nothing from Vince's office. I didn't go into Foster's office with anything in mind concerning any documents that might be in his office. I did not look at, inspect or remove any documents." (July 26 Hearings 154-155)</p>	<p><u>Henry O'Neill</u>: MW carried folders from the Counsel's suite on July 20. "She was carrying what I would describe, in her arms and hands, as folders." (July 26 Hearings 22).</p> <p>"Q: Here is where we are. . . . You saw Maggie Williams coming out of the counsel's office with a stack of papers roughly 5 inches high, folders. She went to her office, put them in her office and locked the door. A: That's correct." (July 26 hearings 22).</p>
2	<p>MW did not review files in Foster's office with BN on July 22. "When I came in it seemed pretty much settled. Like I said, I can't recall if he had the files boxed that he pointed to or designated as the files that he wanted me to get to Barnett or whether or not they were just in a stack on the table. But it seemed like whatever he was doing, it was done." (MW Dep. 119).</p> <p>"Q: So Mr. Nussbaum had already made the selection of the files before you got there? A: That's my understanding, yes." (July 26 Hearings 171).</p>	<p><u>Deborah Gorham</u>: BN and MW both reviewed documents in Foster's office on July 22. "Mr. Nussbaum had called me into Mr. Foster's office and asked me to state to him what were the file folders in the file drawer that contained the President's and First Lady's personal and financial documents. Q: Was Mr. Nussbaum alone at that point? A: He was not. Q: Who was with him? A: Ms. Maggie Williams." (Aug. 1 Hearings 16-17, 18-19).</p> <p><u>Bernie Nussbaum</u>: MW and BN both reviewed documents in Foster's office on July 22. "This is Maggie walks in. Let's do this, Maggie. We start doing it. I may walk out to take a call. We complete doing it, but it was done relatively promptly." (BN Dep. 240).</p> <p>"Then together Maggie and I started looking to try to select--making sure we took Clinton personal files rather than any other files." (BN Dep. 237-238).</p>

	WILLIAMS	OTHER WITNESSES...
3	<p>BN asked MW to transfer the files directly to Robert Barnett, and MW made an independent decision to put them in the residence. "What I believe he said to me was would you get these over to the personal lawyer of the Clintons, who I believed, and I was right, was Bob Barnett of Williams & Connolly." (July 26 Hearings 168).</p> <p>"I had determined that I was going to take the files to the residence.... I made that determination." (July 26 Hearings 220).</p>	<p><u>Bernie Nussbaum:</u> BN and MW discussed taking the files from Foster's office to the residence. "Obviously, I presumed they were going to the residence, and I think Maggie and I probably discussed that. That's the most likely, send them to the residence, and talk to the Clintons and they will be sent from the residence on to their personal attorneys." (BN Dep. 238)</p>
4	<p>MW did not tell Thomas Castleton ("TC") that the First Lady intended to review the files. "Q: Did you tell him that the President or the First Lady had to review the contents of the boxes to determine what was in them? A: Why would I tell an intern that?" (MW Dep. 141).</p> <p>"I don't remember having a conversation with Tom Castleton other than, you know, we're going to the residence." (MW Dep. 141).</p>	<p><u>Thomas Castleton:</u> MW told TC that HRC would review the files. "She (MW) said that the President or the First Lady had to review the contents of the boxes to determine what was in them." (TC Dep. 139) "My best recollection as of today was that she did mention that they would be reviewed by the First Lady." (Aug. 3 Hearings 30).</p> <p><u>Bernie Nussbaum:</u> MW returned a file from the residence because it was not a Clinton personal file. "I believe Ms. Williams returned the document. A residence file was returned. There was a file that was returned because we were making an effort to send over solely personal documents . . ." (BN Dep. 407-408).</p>

	WILLIAMS	OTHER WITNESSES
5	<p>Hillary Rodham Clinton ("HRC") called Margaret Williams ("MW") twice on July 20. HRC called first during a flight to Arkansas and told MW that she would call back when the plane landed. After landing, HRC called MW and informed her of Foster's death. (MW Dep. 24-25; July 26 Hearings 290-292).</p>	<p><u>Lisa Caputo</u>: HRC was notified of Foster's death <i>after</i> the plane landed, somewhere between 8:00 p.m. and 9:00 p.m. Central Time. (LC Dep. 20).</p> <p><u>Mack McLarty</u>: HRC was notified of Foster's death <i>after</i> HRC's plane landed in Arkansas. (August 7 Hearings).</p>
6	<p>Patsy Thomasson ("PT") was present in Foster's office on July 20 when MW entered; Bernie Nussbaum ("BN") arrived after MW and PT. "When I walked in the door, Patsy Thomasson was sitting at Vincent's desk. I went to sit on the corner of Vince's couch. And then at some point Bernie Nussbaum came in." (MW Dep. 32).</p> <p>"No, what I said was I went into Vince Foster's office. Patsy Thomasson was there, and later Mr. Nussbaum arrived shortly afterwards." (July 26 Hearings 278).</p>	<p><u>Patsy Thomasson</u>: When MW entered Foster's office on July 20, PT and BN were already present. "And I told Bernie, I said Bernie, David Watkins wants me to go look and see if Vince left a note. So we went upstairs together, went into Vince's office. . . . I would describe him as distraught, tears in his eyes and he walked out of the room, and Maggie Williams came in the room, and she sat down either on the sofa or the chair directly across from the desk from me." (PT Dep. 46-47).</p> <p><u>Henry O'Neill</u>: BN entered the White House Counsel's suite with one or two women. "I was just standing there, as I said before, talking to the cleaning women, and I recognized Mr. Nussbaum as I turned to the right. He walked into his office, and just about the same time I noticed other figures walk in behind him and I heard women's voices." (July 26 Hearings 12, 13).</p>

	WILLIAMS	OTHER WITNESSES
7	<p>PT remained in Foster's office on July 20 when MW and BN left. "I know we left -- Patsy Thomasson was still sitting at Vince's desk when I left, but I don't know what the sequence was with Nussbaum and myself." (MW Dep. 32).</p> <p>"Well, Patsy Thomasson was still there, as I recall. I believe that, as I said to Senator Bond and Senator Mack, that my recollection was that Mr. Nussbaum left first and then I left shortly after that." (July 26 Hearings 279).</p>	<p><u>Patsy Thomasson</u>: MW first left Foster's office, then PT and BN walked out together. "Maggie got up and left. Bernie came back in, still pacing around and he said we probably don't need to be in here. I said well, there's no note in here so let's go, Bernie. So we both walked out of there together." (PT Dep. 47-48).</p> <p><u>Bernie Nussbaum</u>: PT, BN and MW all left Foster's office together. "Everyone just got up and we all left together." (BN Dep. 35).</p> <p><u>Henry O'Neill</u>: BN left the White House Counsel's suite, then MW and Evelyn Lieberman ("EL") walked out together. "And then she (Evelyn Lieberman) came back out, and right after I saw Mr. Nussbaum come out, and he walked away, and he walked down the steps as far as I remember. And then I saw Maggie Williams come out and both women were standing there, and Ms. Lieberman mentioned to me that she wanted the room locked." (HO Dep. 80).</p>
8	<p>EL did not enter the White House Counsel's suite with MW on July 20. "Not when I was there. I only saw her --she was only at the desk." (MW Dep. 55).</p>	<p><u>Henry O'Neill</u>: EL entered the White House Counsel's suite on July 20. "Well I just remember being in the hallway and I was talking to -- I never went back into the suite and I noticed Ms. Lieberman standing there. . . Standing right outside the doors of the chief counsel's office . . . She went back and walk into the office." (HO Dep. 80).</p>
9	<p>EL did not introduce MW to HO. (MW Dep. 55).</p>	<p><u>Henry O'Neill</u>: EL introduced MW to HO. "And then she said this is Maggie Williams." (HO Dep. 80).</p>

	WILLIAMS	OTHER WITNESSES
10	<p>MW did not speak to Susan Thomases ("ST") by telephone on July 21 or 22. "I didn't talk to her. A lot of people page me that I don't get back to, you know." (MW Dep. 57).</p> <p>"My recollection of talking with Susan was that it was not over the phone. It was in person." (MW Dep. 58).</p>	<p>Telephone records indicate ST called MW's office two times on July 21 and five times on July 22.</p> <p><u>Susan Thomases:</u> ST talked to MW on July 21 and 22. "Q: Did you have any conversations with Ms. Williams either on the 21st or 22nd before you returned to New York? A: I think I talked to Maggie on both dates, but I don't know what conversations I had on which date." (ST Dep. 109).</p>
11	<p>Deborah Gorham ("DG") did not identify files in Foster's office for BN and MW on July 22. "But I do not remember anything involving reading categories or if she was in the act of reading when I got there or anything like that." (MW Dep. 120-121).</p> <p>"Q: Was there a point in time she offered to help Mr. Nussbaum go through an index or a list of the personal files? A: Not while I was there, not that I recall, no." (July 26 Hearings 176)</p>	<p><u>Deborah Gorham:</u> BN asked DG to identify the Clintons' personal files for BN and MW on July 22. "Q: Mr. Nussbaum was in that office. Maggie Williams was in that office? A: Yes. Q: Anyone else? A: No. Q: What did Mr. Nussbaum say to you when he asked you to come into the office? A: He asked me to give him -- to cite to him a listing of what was contained in the file folder -- in the drawer which contained file folders of the President's personal and financial matters." (DG Dep. 136).</p>
12	<p>MW safeguarded the key to the residence closet between July 22 and July 27. "But I had the key." (MW Dep. 146).</p> <p>"I think she just gave it to me. I mean, I'm not sure that Carolyn--I don't know if Carolyn thought that, you know, I needed to have the key for some reason or whatever; she just gave it to me. I hooked it on my thing, on my key chain." (MW Dep. 170).</p>	<p><u>Carolyn Huber:</u> CH placed the key back into the desk drawer. "I locked the door, put the key back in the drawer and we went downstairs." (Aug. 3 Hearings 17).</p>

Senator BENNETT. As I look through it, I see that some of these fall in the category that we've been talking about, where recollections can differ. They are relatively minor and I won't go through all of them. As I say, I think putting them in the record is sufficient to help people who want to go through, a compilation has been made. But I do want to raise some of them with you, Mr. Nussbaum, because the contradiction between her memory and yours on some issues I think we ought to deal with, as long as you're here.

You testified with respect to July 22, reviewing documents in the office, you testified Maggie walks in, let's do this Maggie, is on your deposition, page 240. We start doing it. I may walk out to take a call. We complete doing it, but it was done relatively promptly.

You say, then together Maggie and I started looking to try to select, making sure we took Clinton personal files, rather than any other files. She denies having any role at all in going through the files. Would you comment on that?

Mr. NUSSBAUM. Yes, I think really our recollections are basically consistent. She didn't go through any files. What she did is sort of glance, at least my memory is—her memory may be different than this—she glanced at particular file folders, the titles, just to make sure, and she glanced in the area in which the Clinton personal files were which was in the credenza or some of them may have been pulled out of the credenza, just to see if there was anything, any obvious personal file that I overlooked.

She wasn't conducting a search or a review of any file, so her testimony probably reflects that. My testimony also reflects that. Now we used different words to express it, and so somebody may claim there's a contradiction. I really don't see a basic contradiction between the two of us there.

Senator BENNETT. Well, what she said—never mind and I respectfully, sir, disagree with you. I see a contradiction. She describes coming in the room. She says:

When I came in, it seemed pretty much settled. Like I said, I can't recall if he had the files boxed that he pointed to or designated as the files that he wanted me to get to Barnett, or whether or not they were just in a stack on the table, but it seemed like whatever he was doing, it was done.

So Mr. Nussbaum had already made the selection of the files before you got there? That's my understanding, yes.

That sounds different from what you have just described?

Mr. NUSSBAUM. No, it was done; I did it, but I asked her to check to see, to take a quick look at labels to see if there's any personal file I might have missed. This took a very brief period of time. I remember that. She may not remember that. I mean, there may be a difference in our recollections, but I don't think it's that great.

Senator BENNETT. The reason I focus on this one, Mr. Nussbaum, you have made privilege the holy grail of this entire activity. You are most proud of your ability to protect the Clinton's right to assert privilege later on. You point out that they did not assert the privilege later on, but you protected their right to do so.

Mr. NUSSBAUM. Yes, sir.

Senator BENNETT. Would Maggie Williams' access to the files constitute a waiver of the privilege that I've heard you discuss back

and forth? She is not a lawyer, she is not a client. Would this constitute waiver of a privilege?

Mr. NUSSBAUM. No, it would not.

Senator BENNETT. Why not?

Mr. NUSSBAUM. Because, and let me quote to you from Weinstein on Evidence, Section 503(a)(4)(01) which says, "Disclosure to those reasonably necessary for transmitting the communication has readily been recognized as not destroying the privilege." That's an exact quote, and those reasonably necessary include people like secretaries, clerks, or other employees. People are, from time to time, using intermediaries to convey information. Maggie was a significant employee of the Clinton's, so it would not destroy privilege, it would not waive.

In any event, Maggie, at least in my presence, didn't even examine the documents. She didn't examine the files. She just picked up the files and had them taken to the residence.

Senator BENNETT. Your previous deposition implies that she did examine the files and we're back there.

Mr. NUSSBAUM. No, I believe what I was trying to say is that she was looking at labels, but the point is, the essential legal point that you properly focused me on, Senator, is that you don't necessarily waive the privilege by delivering documents to an employee of the client, the one who possesses the privilege.

Senator BENNETT. Well, OK. So clearly the clients here were the Clinton's?

Mr. NUSSBAUM. With respect to their personal documents, yes, the clients were the Clinton's, yes.

Senator BENNETT. So the Justice Department represents something other than the client? The client is not the U.S. Government? The Justice Department people represent the U.S. Government?

Mr. NUSSBAUM. My client is the President and the White House in their official capacity, but my job as a lawyer generally is to ensure that personal files go back to the client, after a lawyer's death who has been working with those personal files for official purposes, go back to the client, go back to the person whose files they were, in this case, the Clinton's or their personal attorneys.

Senator BENNETT. I understand that.

Mr. NUSSBAUM. That's what I was doing.

Senator BENNETT. You don't need to repeat that.

Mr. NUSSBAUM. There's a specific ethical consideration in the Code of Professional Responsibility, Senator, that deals with that which you may or may not be aware of.

Senator BENNETT. No, you've made that very clear, and I understand that. I will make an observation which may be sensationalized, and I hope it does not get sensationalized, but I cannot refrain.

You protected the privilege very well and you say the Clinton's allowed everything to come out. You did, however, follow a procedure in the name of protecting privilege which made it possible, and here we're getting into the area and the conspiracy theorists are going to pick it up, and I regret giving them any grist for the mill, but I have to say it.

You followed a procedure that if, in fact, there was a document somebody wanted removed before they made everything public,

they could have done it, and it would have been cloaked under the procedure that you followed to protect privilege. I'm not accusing you of that motive, but I am saying that what you did produced a circumstance where that was possible, and that's probably part of the reason you're in so much trouble.

Mr. NUSSBAUM. I don't think I'm in any trouble, Senator, but that's a fair statement, what you just said. And my response to that statement is that this situation or that circumstance that you referred to has now been under intensive investigation for 2 years by Congressional Committees, by Independent Counsel, and yet not anybody has come up with a single shred of evidence that any document, any relevant document was destroyed by anyone.

So, yes, that circumstance may have been created. I do not believe any document was destroyed, as I indicated, but you do not have to take my word for it. There's been 2 years of intensive investigation and not one single shred of evidence has arisen that a single document of any importance at all, or any document was destroyed.

What I said in my statement's correct. I acted in a way in which every document was preserved and every document that law enforcement officials wanted was turned over to them.

Senator BENNETT. I would like to get to one other thing, if I could. You made the statement here today you were happy when the note was finally found. You had been looking for it. Nobody wants to find the note more than you. You were happy when the note was found. That is clearly not the impression contemporaneously that the White House support staff have.

Yesterday, when we were talking about this, you said, well, I may not have been properly sensitive to their feelings. They were left out and they felt left out.

Mr. NUSSBAUM. That's correct, Senator.

Senator BENNETT. Clearly, they did not perceive you as being happy, and their reaction was not of people who had been left out. Deb Gorham did not feel left out when you grilled her, interrogated her, demanding to know what she had seen. You may not have been present at the exchange with Deb Gorham.

Mr. Chertoff, who clearly has the capacity to be somewhat abrasive, asked her——

Mr. NUSSBAUM. I haven't noticed that, Senator.

Senator BENNETT. Asked her specifically, or it was asked of her, is the grilling the same kind that you've seen Mr. Chertoff give, and she said, yes, that's the kind of grilling I was getting from Bernie Nussbaum.

That does not sound like someone who is happy to have found a note, sitting down with someone on the support staff, and grilling her in that specific fashion, as to what she may have seen, and asking the question repeatedly and going at it again and again. You've shown me you have the capacity to go after an issue again and again. We've seen some of that while you've been here too.

I asked her the question, were people paranoid. Her answer to me was, I was not paranoid. Then I said, how about the others. And she responded, yes, the others were acting in a manner in which was paranoid. How can you come across to people as being

paranoid and grilling and highly interrogatory when you're so happy that you've finally found the note?

Mr. NUSSBAUM. I explained yesterday, Senator, and I'll not repeat the whole explanation because we engaged in this colloquy yesterday. I did not grill Ms. Gorham, certainly not in the manner that Mr. Chertoff grills people. I certainly did not do that. I did not grill Ms. Gorham like that. I asked the questions in a gentle manner. She was in deep shock, and if I tried to rouse her out of her shock, she may now consider that grilling.

With respect to these allegations or these statements of paranoia, I think that does come from the fact that Deb Gorham and Linda Tripp, both of whom are very good people, as I said yesterday, felt somehow they were being excluded from something important that was going on in the White House Counsel's Office. That's my explanation, Senator. I was there. You weren't there. I was there.

Senator BENNETT. No, I was not there.

Mr. NUSSBAUM. I think my—

That's, I apologize, Mr. Chairman.

I was there. There was no paranoia, there was no hysteria, we were trying to get the facts, with respect, surrounding the finding of the note. That's all we were trying to do and we were doing it in a professional manner.

Senator BENNETT. Well, if I can just make one quick, final observation, Mr. Chairman?

Mr. Nussbaum, you are very good, and you have an explanation for Deb Gorham's testimony, and an explanation for Ms. Tripp's testimony, and an explanation for the Park Police's testimony, and an explanation for Mr. Shelton's testimony, and every one of those explanations, taken by itself, is very good.

I sit back and look at the totality of the thing and I come out exactly where I did yesterday. The White House Counsel's Office has a very smooth, complete description of everything that happened and everything was done properly and everything was done in the name of privilege, and there are high legal standards that directed everything we did.

The picture that comes from everybody else that dealt with the White House Counsel is entirely different. And even though you have an explanation for each particular, the overall pattern still leaves me convinced that there was a tremendous amount of disarray, a tremendous amount of scrambling around, a tremendous amount of improvising, and that things were not as smooth and polished and careful as you now tell the Committee they were.

Mr. NUSSBAUM. They were not. I agree with part of what you say. They were not smooth and polished and careful. I mean, there were bumps and there were mistakes. I didn't run a perfect operation. I was not a perfect White House Counsel and I did not act perfectly in this period.

My basic point was not that everything was done precisely correct. My basic point was that I acted in accordance with my ethical obligations and with respect, as Mr. Chertoff alluded to this morning, with respect to every big decision I had to make, I made the correct decision, I made the right decisions, I made decisions that I look back at 2 years later that I'm proud of. That's all I'm saying.

The picture that some people paint, apparently, of paranoia or hysteria or stumbling around, that's an incorrect picture.

Senator BENNETT. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Sarbanes.

Senator SARBANES. I'm going to yield to Senator Simon. If the Senator would permit me, I just want to make one observation.

I thought that Michael Chertoff's questioning of Deborah Gorham was gentle. I really mean that. If she took that to be grilling, then her threshold for grilling is a very low threshold, I must say.

Senator Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Yes, thank you.

Just a few observations, rather than questions, Mr. Chairman, I will not use my 10 minutes.

Senator Shelby started his questioning by asking an unusual question about control being essential to outcome. When you control questioning, you can also control outcome. When in questions you make charges, then those charges are likely to be printed in the newspapers the next day and maybe on national television.

But to characterize Mr. Nussbaum as a barrier in any way to finding what law enforcement officials were seeking, I believe is a totally unfair characterization, and I think there is nothing in the evidence to suggest that.

As you have mentioned, some mistakes were made. I wish, and you wish, you had indexed everything. I wish, and maybe you wish that you'd had a half an hour meeting with the Park Police and the Justice Department, where everyone said, here's what I'm thinking about, how are you about it. I think this would have been a more diplomatic way of handling things.

But to characterize things, and the testimony, and I happen to have a great deal of respect for Senator Bennett, I think he's one of the finest Members on the other side of the aisle in this body, but to characterize the testimony as entirely contradictory, I think is not accurate.

There are some discrepancies, yes. But I would also point out that one of Mr. Nussbaum's principal critics here has been Phil Heymann, and I asked Phil Heymann, in terms of Bernie Nussbaum, whether it is a fair characterization to say that what he did, from your perspective, was not illegal, not unethical, but unwise? Mr. Heymann responded: "I think that's basically a fair characterization, Senator Simon."

I think we should keep that in mind. We not only have conflicting recollections, which is natural in this series of dramatic events, you have a mini-turf war between various police agencies. Turf wars go on here, they go on in the Executive Branch, they go on everywhere. They go on in business. That's part of what we're dealing with.

We have looked at these days in great detail, probably too great a detail. No Congressional hearing in the 206 years of the history of this Congress, has ever spent as much time on a few scraps of paper as this Congressional hearing has. My conclusion, in terms of what we have found, is there is no evidence of any attempt to

cover up anything. Now those who want to build some kind of a case and want to ignore the facts, they can put something together.

Second, there is no evidence of any connection between the handling of the documents and what is called Whitewater. I think that's what we've discovered so far in these 3 weeks. To the extent that we may have dispelled some of these allegations, I think that is important.

I would add two other points, one of which is not the focus of this hearing. One, for those who have a conspiracy theory, who believe that Vince Foster did not commit suicide, there has not been one witness, one scintilla of evidence that Vince Foster did not commit suicide. Second, there has not been one shred of suggestion on the part of any credible witness or any witness that Whitewater was in any way involved in his suicide.

These are just some general observations, as we have the last day of this first phase of hearings, Mr. Chairman, that I thought I would make, and I yield back the balance of my time.

Senator DODD. May I ask my colleague to yield whatever little time he has——

Senator SIMON. I would be pleased to yield to my colleague from Connecticut.

Senator DODD. Is that appropriate? Mr. Chairman, because so much time has been spent on focusing on this note and I made or I tried to make this point on several occasions, and maybe for those who are catching snippets of this and hear about these 27 torn pieces of paper, I would understand the length of time that we have dwelt on this if the 27 pieces of paper had been thrown out, had been burned, were illegible, there was blurred ink and we didn't know what it said, or if you had pieced the pages together and there was some highly incriminating evidence regarding the White House.

Under any one of those circumstances, I think dwelling on why these papers hadn't been found earlier would at least be justified. For the life of me, what I don't understand is, and I'm going to ask, Mr. Chairman, if I can, to put up the typed copy of this note on the screens if we could here.

[Pause.]

Would you put that up on the screen, please?

[Pause.]

Now, Mr. Nussbaum, I realize this may not be exactly a painless exercise, but you've been asked to do other things. But I've read this note dozens of times, trying to discern if there was anything in this writing, note, whatever else you may want to call it, that had it not been the subject of some scraps of paper here, would have been, that anyone associated with the White House would be justified in keeping it private or somehow not making it public. I wonder if you might take a minute or so out and just please read this note, and tell me whether or not there's anything in here that you see that is incriminating in any way to the White House?

Mr. NUSSBAUM. This is the note.

I made mistakes from ignorance, inexperience, and overwork. I did not knowingly violate any law or standard of conduct. No one in the White House, to my knowledge, violated any law or standard of conduct, including any action in the Travel Office. There was no intent to benefit any individual or specific group. The FBI lied in their report to the AG. The press is covering up the illegal benefits they received

from the Travel staff. The GOP has lied and misrepresented its knowledge and role and covered up a prior investigation. The Usher's Office plotted to have excessive costs incurred, taking advantage of CACI and HRC. The public will never believe the innocence of the Clintons and their loyal staff. The WSJ editors lie without consequence. I was not meant for the job or the spotlight of public life in Washington. Here ruining people is considered sport.

Senator DODD. I apologize for having you go through this, because it's painful. I should point out that this is a transcription, not the note itself, for purposes of the record. But is there anything in that transcription which in any way would indicate some complicity on the part of the White House that would warrant anyone wanting to keep that note from the public view or from the investigation of legal authorities?

Mr. NUSSBAUM. Absolutely not. When we turned it over, indeed, we were pressing at that point to have it released to the press as promptly as possible. Everybody was very sad about the death, but we were pressing to have this released as promptly as possible. But the Department of Justice didn't want to do that, so we held back.

In any event, to answer your question, there was nothing in this note that would induce us not to want to give it to the Department of Justice or to the public at large.

Senator DODD. As I say, and the time is up here, but I would just make the point again, if we didn't have this note, if someone had burned it, destroyed it, the writing were not legible, you couldn't even put this together, I could understand I think the amount of time that's been spent on it. But since we have the note, we know what it says, common sense would seem to indicate, once you've read it, that justification for whatever conspiracy someone may be conjuring up for not wanting to reveal this, seems to go out the window once you've read it. If you couldn't read it, I could understand maybe the attention. If you can read it, I'm perplexed as to why this is still the subject of so much attention.

I thank you, Mr. Chairman.

The CHAIRMAN. Senator Faircloth would you yield to Senator Bennett, I think he has a quick question?

Senator FAIRCLOTH. I sure will.

The CHAIRMAN. Senator Bennett.

Senator BENNETT. It's not that quick, but I'll do the best I can.

Senator FAIRCLOTH. I hadn't expected it to be that quick.

Senator BENNETT. OK. Just so, while Mr. Nussbaum is here, we have this straight between us, I would like, Mr. Chairman, to repeat the colloquy that took place between me and Ms. Gorham on this issue, so that you hear directly what was said.

Senator BENNETT. Ms. Gorham, you described a conversation with Mr. Nussbaum where the impression that I got—I'll put it in my words—was that it was an interrogation. He went at you very vigorously, he repeatedly asked you what you saw in the briefcase, almost as if he were a prosecutor trying to break down your story. That's my interpretation of what you said. Is that a fair interpretation?

Ms. GORHAM. That is a correct interpretation.

Senator BENNETT. OK. I understand that the note had been found at the time that interrogation took place. We can check that, but it's my understanding that as of the time he was asking you those questions he already had the note. Why didn't he ask you about the folder you said you saw? This is the first time I've ever heard of any folder having been in the briefcase. Did he ask you about that folder?

Ms. GORHAM. I don't recall if he asked me about that folder or not.

Senator BENNETT. But his primary focus was on the yellow pieces of paper?

Ms. GORHAM. His focus was on my explanation of what I found, which was the color yellow, and asking me to indicate or identify what size or shape or form.

Senator BENNETT. OK. When you say what you found, you're not leaving the impression that you found anything, it's what you had seen?

Ms. GORHAM. What I had seen out of the corner of my eye as I picked it up.

Senator BENNETT. OK. I'd like you to comment on the pattern that I see here. Here's an intense interrogation by Mr. Nussbaum, what did you see, and you can't satisfy him. He keeps coming back to it. The pattern that the two of you have testified to of the slamming of doors and the coming and going and we've got to have a typewriter in here for us to use, shows a high degree of concern over a fairly long period of time with the question of what did someone other than the tight group that came in with the Clintons see and know about this. Is it fair to say that there was a bit of paranoia around here, or am I going farther than is proper?

Ms. GORHAM. Sir, I'm sorry, I cannot tell you how others felt, but I never felt paranoid.

Senator BENNETT. I'm not suggesting that you felt paranoia, I'm suggesting there is a pattern of behavior that suggests to me a higher concern about what the staff may have seen and may be in on than I think we could explain just in terms of grief.

Ms. GORHAM. It would seem so by the amount of questioning that took place between Bernie and myself—Bernie questioning me.

Would you like to comment on that with that direct quote, not just my memory? That's the exchange that took place, word for word.

Mr. NUSSBAUM. Well, she thought Mr. Chertoff was tough on her. He was easy on her. I guess she thought I was tough on her when I also was easy on her.

It just—look, that's her memory. She was distraught then. I think in many ways, Deborah Gorham's probably even a little distraught now about the situation. I treated her at all times in a polite, decent, and gentle fashion. There are many other people in the White House Counsel's Office who you can question about that. I think those people who saw my relationship with Deborah Gorham would support what I was saying right now.

I think what she testified to was, as I said earlier, a product of her grief at the time, a product of her being in shock at the time, and, indeed, it's even a product of her grief at this late date.

That's all I have to say, Senator.

Senator BENNETT. Thank you.

The CHAIRMAN. Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Mr. Nussbaum.

Mr. NUSSBAUM. Yes, Senator, we haven't met yet, but it's nice to meet you.

The CHAIRMAN. Well, you may regret saying that.

Senator FAIRCLOTH. As Patrick Henry's epitaph, on second thought, you may also.

You testified yesterday that you escorted Maggie Williams and Patsy Thomasson out of the Counsel's Office, and then went back into your office to make some phone calls. You went on to say that you locked up the office upon leaving the night of July 20.

Leaving aside the fact that Ms. Williams and Ms. Thomasson don't remember leaving the office the same way as you do, and that the veteran Secret Service Agent O'Neill testified before this Committee that he locked and alarmed the office that evening, and we have the alarm log which shows that Mr. O'Neill did, in fact, lock

the office that night. Now, Mr. Nussbaum, how can you expect this Committee to believe that the alarm log is wrong? When Mr. Castleton locked the office earlier that evening, his name appears on the log. This record clearly shows that you did not lock the office, that Mr. O'Neill did.

Mr. NUSSBAUM. No, no——

Senator FAIRCLOTH. Would you wait a minute until I finish?

Now, I've been asking myself why you would insist that you were the one to lock up the office that night, and even go so far as to say that the Secret Service log is wrong. Well, the only thing that makes sense to me is that you didn't want to leave any doubt in the Committee's mind that Maggie Williams was in Vince Foster's office after you left and that, in fact, as Officer O'Neill testifies, you were not the last one out of the office; Maggie Williams was.

If in fact Maggie Williams was the last one out of the Counsel's suite that night, you cannot definitely tell this Committee that Maggie Williams did not remove any documents from the suite that night.

It appears to me that we have the word of a career law enforcement officer and Secret Service Agent O'Neill, against Clinton crone Maggie Williams who, when here before this Committee, could not remember whether the sky was blue or not, totally entered a plea of insanity.

Mr. Nussbaum——

Senator MOSELEY-BRAUN. Now wait a minute, Senator Faircloth. Number one, that kind of character assassination is absolutely uncalled for. The second thing, the question was never asked whether the sky was blue. And in the third place, I think you are totally out of bounds.

Senator FAIRCLOTH. I think you are too.

If you let me finish, then you can talk after I finish.

Senator MOSELEY-BRAUN. Senator Faircloth——

The CHAIRMAN. I'm going to ask that we all just take a step back now, and——

Senator FAIRCLOTH. Mr. Nussbaum, I don't want to hear about the lie detector test that she took. We all know she took practice tests which totally discredits the real test given by the Independent Counsel.

Now, Mr. Nussbaum, you have to insist that you——

Senator SARBANES. On what basis?

Senator FAIRCLOTH. You have to insist that you locked up the office that night because if this one detail fell apart, then so does the story of your accomplice, Maggie Williams.

Mr. Nussbaum, please explain to me how you expect this Committee to believe that you locked up the Counsel's suite, when this document, which is on the screen, clearly shows you did not?

Senator SARBANES. Mr. Chairman, I have to lodge an objection to some of the characterizations contained in the question.

Now, the sky is blue, as Senator Moseley-Braun observed, that question was never put.

A plea of insanity?

You know, there's a certain element of fairness and the Senator has an opportunity to ask a question. He can load an awful lot of

unfairness into the premises of his question before a response is ever made.

The CHAIRMAN. I'm going to ask the witness to respond obviously to the question as it relates to the log, and we're going to say that sometimes there is a tendency, and I would note that it has not been very frequent here, and I think that the basic decorum has been one that we've been satisfied with.

People will add characterizations, so without addressing the characterizations, Mr. Nussbaum, if you can respond, I think to the central point of the Senator's question, as it relates to the description that we see here that Officer O'Neill has locked the alarm against your testimony that you did.

Obviously he is concerned that if that is the case, that indeed you were not the last person out, and maybe Maggie Williams was still there. That would comport with Officer O'Neill, who after everyone else was gone, saw Ms. Williams carry the box. Now that's what it comes down to.

Mr. NUSSBAUM. Well, I have to say, I'll respond to the question, but I'm also shocked and dismayed by the character assassination, but I'll respond to the question.

I remember being the last one to leave the office that night and locking it up. What I don't remember is whether or not I called the Secret Service when I did so.

If I, as I explained yesterday—you may not have been here, Senator Faircloth when I did this—the normal procedure is to go into Vince's office, turn on the alarm, then go over to the phone, call the Secret Service and say, this is Mr. Nussbaum, I'm locking the office. Leave the office and lock the door. And then presumably the log would reflect the name of the person who called.

If I didn't—but you can lock the office and turn on the alarm without making that call. If you do it without making that call, they may get, the Secret Service log may get the wrong name. In other words, it may get a name of a person who did it previously, the person who made the last call. I'm not saying that happened here. I don't know what happened here.

What I'm doing is giving you a possible explanation as to why I could be the last one out, locking the office and turning on the alarm, and yet the Secret Service log not reflecting that because I neglected, which sometimes we did neglect to do from time to time, especially that night, when there was a great deal of distress, to call the Secret Service and say, look, you know, this is Mr. Nussbaum, I'm the last one leaving.

That's an explanation for making my memory consistent with what was on the log but I was in the office for an hour prior to the time of its being locked, and I categorically state to you, Senator Faircloth, and to the Members of your Committee, that Maggie Williams, who was not my accomplice, but a wonderful, decent, honest woman, was not in the office that night, other than the 10 minutes that I was with her when we were searching for a note. And I think, when this is all over, that's what the record will show, and anybody who makes charges to the contrary is going to be ashamed of those charges ultimately.

Senator FAIRCLOTH. Mr. Nussbaum, would you tell me why a career Secret Service Agent, 18 years, would testify——

Senator SARBANES. He's not an agent. A Secret Service Uniformed Officer.

Senator FAIRCLOTH. A uniformed Secret Service Officer would testify that he met Ms. Williams, she had this stack of papers 3 to 5 inches high, folders, that she took them into her office, and that he locked the office after she left? Why would this man testify to such a devastating piece of evidence if it were not so?

Mr. NUSSBAUM. Because, like so many people in life, you know, I've seen this in this proceeding, and I've seen it in litigation, people, and it happens to all of us. It happens to you, it happens to me, it happens to all of us. People get confused from time to time about events. People telescope events. Something happens on one day and you think it happens on another day.

Maggie Williams walked through the West Wing everyday of her existence there, in the evening of her existence there. Her office was right near my office and near the First Lady's office. There are many days that Maggie Williams would be walking through the second floor of the West Wing where our offices were located with stacks of files in her arms. There are many days she would do that.

What Officer O'Neill, to me, Senator, with all due respect to this Committee, what this agent—not agent, security guard basically, primarily did, in my view, is confuse one date with another date. Now he didn't mention it for many months later, and you know, there's all sorts of indications like that, but I'm not even focusing on that very much.

But it's quite clear to me that at one time he obviously saw Maggie Williams carrying files. She did that, as I said, day after day after day. He just got it wrong when he says, it happened the night of July 20, 1993, when Vince Foster committed suicide.

That's my explanation. I'm not saying he's lying, I'm saying he's just wrong and it's even understandable when you look at all the circumstances.

I hope I've answered your question, Senator.

Senator FAIRCLOTH. Well, you've answered the question. I don't believe the answer but that's all right. I simply do not believe that this career officer met Maggie Williams, and he nor Ms. Williams are petite people, in a 5-foot hallway and he didn't recognize her and what she had in her arms.

Mr. Chairman, I——

The CHAIRMAN. Thank you, Senator.

Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I'll be very quick. I just want to make a couple of observations.

First, we understand that Officer O'Neill, the uniformed officer that we're talking about, had either four or five separate interviews with the FBI as part of the work of the Independent Counsel, in which he related his recollection of what occurred. Apparently he related it once, was brought back to relate it again, and brought back yet another time and another time, perhaps even a fifth time. And of course, we've been seeking those reports from the Independent Counsel and the Chairman and I have joined together in doing that. Obviously, that would be helpful in this context.

Second, I'm trying to understand, even if one accepted Mr. Spafford's version of what occurred, I have difficulty understanding

what difference that would make other than that you made an even bigger error than you've admitted to in terms of searching the briefcase.

When Senator Frist went through this, and he said:

What did Mr. Nussbaum say in response to Mr. Sloan's statement and his demonstration that there were scraps of paper in the bottom of the briefcase?

Mr. SPAFFORD. Mr. Nussbaum was sitting on the couch or the sofa at the time, and his comment was something to the effect that we will get to all of that later; we have to look through the materials, and we will look through that later.

Senator FRIST. Were you left with the impression of that statement that, indeed, these scraps would be looked at later?

Mr. SPAFFORD. That's correct.

Senator FRIST. Now, when Mr. Sloan stated that there were scraps of paper there, was Mr. Nussbaum surprised? What was his reaction?

Mr. SPAFFORD. Mr. Nussbaum, as near as I can recall, did not have a reaction. It was an off-the-cuff remark by Mr. Sloan to which I attached very little significance at the time, and it appeared that Mr. Nussbaum attached very little significance to it, as well.

Your error may have been, assuming that your recollection is that that conversation did not take place, but let's make the other assumption because what's happening around here and I want to make this point generally, is we get conflicts in recollection.

I said early in the course of these hearings that I took some comfort from the conflicts in recollection, because if everyone came walking in here, telling exactly the same story, as to what had happened 2 years ago to the very minute in excruciating detail, I would start wondering, well, what's going on here. That's not normal human conduct.

Normal human conduct is to have difficulty remembering, to have conflicts in testimony. People see things in different ways. They may remember something as happening on this day, when it happened on some other day. They remember it happening before an event, instead of after the event. So in a sense, I find these conflict in recollections normal.

Then the question becomes well, there's a conflict in recollection, and then that becomes a large issue. But occasionally, you have to ask yourself, well, let's take it either way. What's the consequence of taking it one way or taking it the other way.

In this instance, it seems to me that even if Mr. Spafford's version was correct, that the worst out of this is that Mr. Nussbaum was deficient in not going back into that briefcase. Now in the end, what was in the briefcase came out. Isn't that correct, as best we can follow this line?

Mr. NUSSBAUM. Yes, Senator, that's correct.

Senator SARBANES. It didn't happen on that day, which was the 22nd, and as you've said today would have been helpful, extremely helpful to have had it on that day, because it would have been prior to the funeral, it was at a time of extreme distress in the Foster family, but it did happen at the beginning of the following week. Did you go into your office over that weekend after the funeral?

Mr. NUSSBAUM. No, no, I did not. I gave the entire staff off that weekend, and I went out of town. When I came back from Arkansas, we went to Arkansas, we all flew on Air Force One to Arkansas, virtually my entire staff went to Arkansas on Air Force One to the funeral. We came back very, very late Friday night. It was

a one-day trip, it was a very intense day, and I told everybody to take off the weekend. I didn't want anybody working that weekend.

I myself went to Maine that weekend, Saturday and Sunday. I arrived back in Washington late Sunday night, and I went into the office Monday morning. So the answer to your question is, I wasn't in my office during that weekend.

Senator SARBANES. Senator Dodd.

Senator DODD. Well, just a point on Maggie Williams. I think it's worthwhile pointing out that Maggie Williams took two lie detector tests. The results of those lie detector tests were then upheld and corroborated by one of the top law enforcement officials who have no particular interest in this matter, as being good tests, which she passed with flying colors.

Now, as I gather, no request was made of Mr. O'Neill to take a lie detector test. I'm not suggesting one should be asked of him, nor am I suggesting that he is lying at all here. But it seems to me to impugn the character of someone who has gone through that process and answered those, the results of those tests have been strongly supported by people who have no particular interest in this matter other than fulfilling their obligations and drawing those conclusions, ought not to be lost on people as we try and determine the veracity of statements being made by witnesses.

Thank you and I would gladly yield. I don't know what—

Senator SARBANES. I'm sorry. I failed to yield to Senator Moseley-Braun.

Senator MOSELEY-BRAUN. It's all right.

Mr. Chairman, I'll allow you to conclude this matter if that's in order. Are we done? Can we go home yet?

The CHAIRMAN. I think when you conclude here, the witness needs a little break, so we're going to take a 5-minute break because I think we are very close. I know Mr. Chertoff has some questions, but I think we are very close to wrapping up. We're going to have another panel and so I would like to move it, but why don't you go ahead?

Senator MOSELEY-BRAUN. Thank you.

Senator KERRY. Well, are you going to go or?

Senator MOSELEY-BRAUN. No, I yield to Senator Kerry.

Senator KERRY. Mr. Nussbaum, I wanted to complete the questioning that I had started earlier. The unfortunate part of getting going is that we get interrupted in the process and so we left one component of that out, when frankly there's another component that I think is equally important, if not perhaps more important.

I was asking you about a series of your knowledge with respect to a period of time where I disagreed with a conclusion you had drawn about speculative time period, that is, after it left.

But what is really important is the nonspeculative time period, what happened while the documents were in your custody and while the law enforcement officers were with you. I want to just review that for a minute because I think that is perhaps one of the most relevant and critical components of any judgments we make specifically, and I see the light going on.

You had members of the Department of Justice and the Park Police and Mr. Foster's attorney all present in his office, correct?

Mr. NUSSBAUM. And the FBI and the Secret Service.

Senator KERRY. And the FBI and the Secret Service.

Mr. NUSSBAUM. Yes.

Senator KERRY. You read through each document in that office, including the personal files in their presence, did you not?

Mr. NUSSBAUM. Yes, I glanced at each. I cannot say I read each document in its entirety, but—

Senator KERRY. I understand but you characterized it to them?

Mr. NUSSBAUM. Correct.

Senator KERRY. You opened up the file and said to them, this is this kind of document?

Mr. NUSSBAUM. Correct.

Senator KERRY. They had no right to subpoena any of those documents, did they?

Mr. NUSSBAUM. They did not.

Senator KERRY. The only access they could have to those documents was, in effect, your making a judgment about how the privilege would be played out, the various privileges?

Mr. NUSSBAUM. Correct, that's right. I wanted to sort of balance the—they wanted into the office to search for a suicide note, and I didn't want to keep them out, even though other people were advising that.

Senator KERRY. But I think what's really important for everybody to understand at this point in time is that as of that day, which was then July 22, the only issue in front of law enforcement officers, the only discussion, other than the question of Phil Heymann and how it looks, substantively the only question was, is there a suicide note or is there a note that shows potential of extortion or state of mind?

Mr. NUSSBAUM. Or extreme mental anguish. Yes, that's right.

Senator KERRY. And you, as you read them, any one of those parties, Mr. Foster's lawyer, the Secret Service, the Park Police, the Justice Department, could have said, that's a file that we would like to look at, correct?

Mr. NUSSBAUM. Correct.

Senator KERRY. They did, in fact, do that as to some of those files, did they not?

Mr. NUSSBAUM. They did, yes.

Senator KERRY. So any file that law enforcement wanted to see, including the personal files that later were moved, they had an opportunity to say, we want to see that document?

Mr. NUSSBAUM. That's correct.

Senator KERRY. If it raised any kind of suspicion or curiosity or question in their mind?

Mr. NUSSBAUM. That is right.

Senator KERRY. Those documents that they did in fact say, well, we would like to look at that one, that kind of may be something that we want to know more about, they were put in a special pile, were they not?

Mr. NUSSBAUM. They were.

Senator KERRY. That special pile was, in fact, secured in a way that guaranteed that subsequently, when they did want to see them, they knew exactly what files were put away in that file and they got those files, correct?

Mr. NUSSBAUM. That's correct.

Senator KERRY. So when you say that they got everything that was available that they wanted, in effect, you are saying it in that context, that everything that they could have asked for, everything that I went through, everything that they could have then stopped me on, they ultimately got to see?

Mr. NUSSBAUM. That's correct.

Senator KERRY. There's no question about that today, is that right?

Mr. NUSSBAUM. There's no question about that in my mind.

Senator KERRY. So the only issue is really as to this speculative conspiratorial area.

Mr. NUSSBAUM. Correct.

Senator KERRY. If you want to try to construct a conspiracy that says, well, wait a minute, they didn't make, the law enforcement officials, not Bernie Nussbaum, but the law enforcement officials didn't make the right judgment or ask for the right file to be put aside. Therefore, now they can come back after the fact and begin to suggest, well, we didn't get to see what was in that file.

Mr. NUSSBAUM. That's right.

Senator KERRY. Isn't it true that after a couple of days in the newspapers, questions began to circulate and be asked publicly that might have raised somebody's CYA syndrome capacity to sort of say, well, wait a minute, we didn't get to see that and people wanted to start to jockey as to how they might have looked better in the context of that original?

Mr. NUSSBAUM. After the note was discovered and turned over, that's what happened, yes.

Senator KERRY. After the note was discovered?

Mr. NUSSBAUM. Yes.

Senator KERRY. Now, would it not have been better, in retrospect, to have been able to produce a list of those things that went off so that everybody would know that the full number, in fact, turned up elsewhere? Wouldn't you be happier with that today?

Mr. NUSSBAUM. Yes, that's correct. In retrospect, I didn't think it was necessary to index them at the time. There was none of this hysteria that exists today and paranoia, and also, Senator no one asked me. It's true, I could have indexed myself without anybody asking me, but no law enforcement official said to me, look, we know you're moving documents, but you should index everything you're moving so we have a check later on if we want to come back. No one said that to me.

Senator KERRY. So at the moment that that meeting ended, when this review of the documents ended on that particular day with everybody present, no agency, no law enforcement officer said to you, at that moment, we're really concerned about these documents, or you must treat these this way, or don't let these out of your control. None of those orders were issued?

Mr. NUSSBAUM. That's correct, none of those orders were issued.

Senator KERRY. No document was transferred, you are saying to us, that they, in effect, wanted to review because the ones they wanted to review had been set aside and, ultimately, were reviewed?

Mr. NUSSBAUM. That's correct.

Senator KERRY. So we're left with an area for speculation and conspiracy theory but no real evidence, depending on how you come out in the struggle between Maggie Williams and Mr. O'Neill?

Mr. NUSSBAUM. Yes, and we know, very frankly, Senator, the people who had the documents. I had them. I gave them to Maggie Williams, who basically took them over to the residence. They stayed there for 3 or 4 days in a locked cabinet. Carolyn Huber maybe had access to that cabinet, or maybe she didn't. I don't know the exact testimony. Then they're sent to Williams & Connolly on July 27, so 5 days have now passed. Williams & Connolly logs in each document.

Now I know one can speculate that between July 22, there was no index because they were leaving, as we discussed earlier, and July 27 when there was an index, something could have happened.

So what you do is you then go to the people and question them under oath in effect, or in the chain of custody, so to speak, and you say, did you destroy a document, did you take any document out? Did you review the file? What did you do? Each of those people has been questioned by this Committee and also by the Special Counsel.

Senator KERRY. I understand.

Mr. NUSSBAUM. There is not a scintilla of evidence, and it's been 2 years in these investigations. There is not a single document that's missing, or document that's been destroyed.

Senator KERRY. I don't disagree that there aren't issues of appearances. But apart from appearances, law enforcement was looking—I mean, the important measurement, it seems to me, we have to continually keep focused on, is this was a suicide investigation.

Mr. NUSSBAUM. That's right.

Senator KERRY. At least it was an investigation of a death presumed to be a suicide. But no evidence that I've seen yet indicates to me that anybody was looking for anything more than a suicide note, or evidence of some extortion. And if that, to this day, remains all that someone was looking for, and they themselves didn't set aside any other document, including a personal document for that purpose——

Mr. NUSSBAUM. That's right.

Senator KERRY. —it's a little hard to get overly exacerbated about this ancillary, 6-month-later investigation that arose, which then tries to be connected.

Mr. NUSSBAUM. That's right, Senator. No one said to me, "Mr. Nussbaum, we want to look through all the files. We want to read every document. We want to see every matter Vince Foster was working on, personal—we want to see every Clinton personal file, because we want to determine the state of mind. We want to see if there's any potential scandal. We want to see what might have driven him to this thing." No one—there was no basis for that—no one made that suggestion. It was a search, as you said, for a suicide note.

Senator KERRY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Mr. Chertoff.

Mr. CHERTOFF. Mr. Nussbaum, your testimony, to be quite certain—no one told you——

The CHAIRMAN. Let's take a 5-minute break. I know the witness has been here at the table for quite awhile. We'll take a 5-minute break. I think we can conclude it within 15 minutes after we come back.

[Recess.]

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Mr. Nussbaum, I want to be very clear on this. Your testimony is that when the law enforcement people talked to you, they did not tell you that they were interested in evidence of what motivated or what caused this violent death. Is that your testimony?

Mr. NUSSBAUM. They were interested in looking for a suicide note, an extortion note, or some other similar such document reflecting extreme mental anguish.

It is true, Mr. Chertoff, that in the course of the search—and maybe I should have even said this to Senator Kerry—they started making requests. As I was describing documents, they started making requests to look at certain documents, for example, a phone log to show who he had talked to recently. So in that sense, at that time, to some extent, they were broadening their request—let me finish, Mr. Chertoff.

Mr. CHERTOFF. I haven't said a word, Mr. Nussbaum.

Mr. NUSSBAUM. They were broadening their request to ask for additional documents. A phone log is not a suicide note, but a phone log is something that will enable you to talk to people who talked to Vince right before he died, perhaps. So they did broaden their request, and I was agreeable to dialoguing with them or to talking with them about this, and providing them additional documents.

Mr. CHERTOFF. But in order to dialog with them, they had to know what the documents were. They were relying on you to tell them what they were, right?

Mr. NUSSBAUM. I gave them descriptions, general descriptions of each of the files I was looking at.

Mr. CHERTOFF. Did you tell them there was a handwritten, loose-leaf spiral notebook written in Mr. Foster's handwriting which talked about the Travel Office issue and the First Lady?

Mr. NUSSBAUM. Yes, I told them there was a Travel Office file.

Mr. CHERTOFF. A file or something with handwritten notes of Mr. Foster?

Mr. NUSSBAUM. When I got to that file, or that book, or that handwritten note, I said, "These documents involve the Travel Office situation which Mr. Foster had been working on," and indeed, I said, "Which has been mentioned in the newspapers." I told them that.

Mr. CHERTOFF. Did you tell them that he had handwritten notes about it?

Mr. NUSSBAUM. There's a lot of documents there that had handwritten notes in them, Mr. Chertoff. This is a lawyer's office. You know what lawyers do? They take a lot of handwritten notes, and a lot of his files did have handwritten notes.

Mr. CHERTOFF. I understand your position, Mr. Nussbaum.

Mr. NUSSBAUM. Mr. Chertoff, you're interrupting me.

You can plainly see handwritten notes. It was obvious to everyone there were handwritten notes, and indeed, Mr. Chertoff, with respect to the Travel Office file, after the note was discovered on July 26, which clearly mentions the Travel Office matter as something on his mind—I told him there was a Travel Office file. No one asked from the Department of Justice for a Travel Office file, whether it contained handwritten notes or not. They weren't interested in that at that time.

Mr. CHERTOFF. I understand, Mr. Nussbaum, your eagerness to argue for your point of view.

Mr. NUSSBAUM. No, I'm interested to give you the facts.

Mr. CHERTOFF. I would like to get kind of the answers you gave Senator Boxer before, when you gave her the "yes/no" answers. I just want to know: They were relying on you to describe the contents—yes or no.

Mr. NUSSBAUM. They were relying on me to give them a general description of the files. And one of the files I generally described was the Travel Office file.

Mr. CHERTOFF. Were you asked after this procedure was finished to keep the office locked or secured? Yes or no.

Mr. NUSSBAUM. No.

Mr. CHERTOFF. Now, after they left——

Mr. NUSSBAUM. I recall no such request. If such a request would have been made, I would have told them no.

Mr. CHERTOFF. After they left, Maggie Williams came over, correct?

Mr. NUSSBAUM. That's correct.

Mr. CHERTOFF. And we agree that, during the process of assembling the personal documents, you didn't ask anybody to create any kind of record of what was being transmitted, right? Correct?

Mr. NUSSBAUM. Yes, I agree. No one asked me. No Justice Department official asked. They knew, as you knew, Mr. Chertoff, that I was going to disperse files to various places outside the office, and no one asked me to create a log or index of what I was sending outside the office.

Mr. CHERTOFF. The following Monday, when Mr. Neuwirth collected documents to be distributed to other lawyers, he created such a log, right?

Mr. NUSSBAUM. He created a log at my request, because I wanted to sit down with them to look over each of the files listed on that log, so that he and I could make a determination who in the Counsel's Office should now get the file with respect to this particular matter.

Mr. CHERTOFF. But you didn't make the request on the 22nd to have somebody sit down and compile everything? Yes or no.

Mr. NUSSBAUM. The answer to that is no.

Mr. CHERTOFF. I understand there has been some discussion back and forth about whether these are personal documents or official documents, and I understand that this whole issue of Presidential records is complicated. I just want to set this question up for you.

My understanding is that even when the writing was discovered on the 26th, there was at least some question about doing research about privilege, what the legalities were to handling the document.

Certainly, you've made it very clear that you've spent a lot of time thinking about the legalities of allowing access to the office for law enforcement. What did you do on the afternoon of the 22nd, when the documents were going to be taken up to the residence, and then ultimately disseminated outside the White House? What did you do—let me finish, Mr. Nussbaum.

Mr. NUSSBAUM. I'm sorry.

Mr. CHERTOFF. What did you do to have one of those able lawyers in the White House Counsel's Office do some research about the legalities of that? Did any of them do any research?

Mr. NUSSBAUM. It wasn't necessary to do any research. The Presidential Records Act, as you may now know, Mr. Chertoff, contemplates that a Presidential aide may create or receive personal documents. The Presidential Records Act doesn't turn every personal file, even though it's used for an official purpose, into a Presidential record.

But most significant of all, Mr. Chertoff—if you look at the cases, and you look at the Presidential Record Act, it gives the President, while he's in office, total control of his files, both Presidential files and personal files. The President is allowed, Mr. Chertoff—look at the cases—the President is allowed to send even Presidential records out.

Please, Mr. Chertoff, you asked me a question, I would like to finish my answer. The President's allowed, during his term of office, even to take a Presidential record, which these weren't—a Presidential record, and send it outside the White House as long as, at the end of his term of office, he then segregates personal records and Presidential records to make sure Presidential records are preserved. For example, a speech——

The CHAIRMAN. Now, wait. You have given a very comprehensive answer. We don't have to get into the question as it relates to speeches now.

Mr. CHERTOFF. Mr. Nussbaum, again, my question isn't what you've now ascertained. Let me put it this way. I raised this issue with you in your deposition, right?

Mr. NUSSBAUM. You raised——

Mr. CHERTOFF. The Presidential Records Act issue.

Mr. NUSSBAUM. I think so, yes.

Mr. CHERTOFF. At the time of your deposition, you didn't give us this answer, right?

The CHAIRMAN. He's obviously researched it, and that's good.

Mr. NUSSBAUM. I answered the question you asked me in my deposition. If you had asked me a more extensive question to elucidate the Presidential Act, I would have been delighted to do it at that time.

Mr. CHERTOFF. I'm not interested, Mr. Nussbaum, in the research you now have under your hat. I'm interested in that afternoon, just 4 days later, you had someone researching the privilege with respect to the torn-up pieces of paper.

I'm simply asking you this question, and it's really very easy to get a yes or no. Did you have somebody do research that afternoon about evaluating the documents that were being removed to see whether there was any legal restriction? Yes or no.

Mr. NUSSBAUM. On July 22, 1993, I had been Counsel to the President for over 6 months, or approximately 6 months—exactly 6 months. I was aware at that time, because issues had arisen with respect to the fundamental principles of the Presidential Records Act. It is true I probably couldn't cite you the cases I can cite you now, but I was aware of the fundamental principles. And those principles were——

The CHAIRMAN. No, no. You were there. You were established. You had handled matters of this kind. You had done previous research. The answer is no?

Mr. NUSSBAUM. The answer is, did we do research on that day?

The CHAIRMAN. Right.

Mr. NUSSBAUM. We didn't have to do research on that day.

The CHAIRMAN. So the answer is, Bernie——

Mr. NUSSBAUM. The answer is no. We didn't do research on that day.

The CHAIRMAN. Please, that took us 3 minutes.

Mr. NUSSBAUM. That's true.

The CHAIRMAN. OK.

Mr. CHERTOFF. We also had the question arise about whether there are any missing documents. I take it you do not recall an index in the file which contained the documents that were removed to the residence that was missing. Is that your testimony?

Mr. NUSSBAUM. Yes, that's my testimony.

Mr. CHERTOFF. You do agree, and you are clear, that some files, some personal files, were removed from Mr. Foster's office on that afternoon and taken up to the residence. That's also true?

Mr. NUSSBAUM. On July 22, yes.

Mr. CHERTOFF. Now, we do have, in Z1123, what the White House has given us as the index of personal documents that was printed out or amended on Thursday, July 22. And frankly, that index doesn't have in it any mention of a Whitewater file. It doesn't have any mention of a 1992 tax return, and it doesn't have any mention of the files that were removed on that day.

The only files that are listed on the index that was prepared or amended on July 22, Thursday, are the files that Mr. Neuwirth later collected on the 26th. And just a matter of simple mathematics, simple subtraction, tells me that therefore, there's nothing on the index as it existed in the hard drive on July 22 that lists any of the documents that were removed. So my question for you is this. Do you have any knowledge of who it is that might have accessed that hard drive and deleted any of the entries on the document?

Mr. NUSSBAUM. All you've shown is that not every file, not every personal file was on an index.

Mr. CHERTOFF. No. What I've shown, Mr. Nussbaum, is that every file that left is not on the index, and the ones that remained are on the index.

Mr. NUSSBAUM. No, no, no, no. All I think you've shown is that every personal file was clearly not on an index in the White House Counsel's Office. That's not unusual. Files are created, files are brought in which may not be indexed. The fact is that those files, after passing through this chain of custody that I just described to

Senator Kerry before, were indexed. There is an index on July 27, when those files arrived at Williams & Connolly.

Now, to answer your specific question, do I know if anyone—let me start again. Do I know of anyone who went into the computer, who had access to the hard drive, to try to change an index, or delete anything in the index? The answer to that question is no, because it never happened.

Mr. CHERTOFF. Now, let me turn to my final point.

You made an observation about 45 minutes ago in responding to Senator Bennett's questions about your questioning of Deborah Gorham. It's one of those moments—you know what it's like in a trial, where something comes out unexpectedly and it kind of sheds light on something?

Mr. NUSSBAUM. Yes, I know that.

Mr. CHERTOFF. You were asked by Senator Bennett about why you were questioning Deborah Gorham either late on the 26th or early on the 27th concerning what she'd seen in the briefcase. And this is after Mr. Neuwirth was laying the pieces of paper out on the table, and after you had the briefcase. Correct?

Mr. NUSSBAUM. Yes, the answer is, it was obviously after. My problem is, I don't remember this particular conversation with Deborah Gorham, although I assume I did question her as she says I did.

Mr. CHERTOFF. Senator Bennett asked you, why were you pressing her? Why were you asking her again and again what had she seen in the briefcase? You said to him you were trying to get the facts about the finding of the note. This is in the record, Mr. Nussbaum. I wrote it down. You were trying to get the facts about the finding of the note. And that leaves me with this question. Your testimony up to now has been that you always knew the facts of the finding of the note; that you—let me finish.

Mr. NUSSBAUM. I didn't say a word.

Mr. CHERTOFF. That you knew, or that you understood that Mr. Neuwirth had found the note; that you had the briefcase in your possession. Therefore, the question has to come up: Why did you need to ask Deborah Gorham what she knew about the facts of the finding of the note?

Mr. NUSSBAUM. I think I explained that in my testimony, also in colloquies on this subject. I would just amend that particular answer to say, I was questioning her about the finding—if I was questioning her, which I'll acknowledge I was, even though I don't have a memory, about the finding, and if she had any knowledge about the creation of the note.

Yes, I knew about the finding of the note, but I didn't know about the creation of the note. I think I expressed that in my testimony, also in my testimony and my colloquies with Senator Bennett. What I wanted to find out, obviously, is what she knew about how this note was—not so much found; you're right about that. We found it. But how it was created, or what she knew about it generally. That's what I was doing. That's totally logical.

Mr. CHERTOFF. That's exactly right, Mr. Nussbaum. It's totally logical. What I'm trying to separate out here, and I think all the factfinders are going to have to separate out about all your testimony in the last 2 days is this. Which parts of the testimony are

based on recollection, and which parts are based on what you think is logical after the fact; what you're—as you sometimes use the expression—reconstructing after the fact after you've had an understanding of what has gone before?

So let me come back to this one particular point, a point which arises after we've heard about the conflicts with your testimony and Mr. Spafford's testimony, and your opinion of Ms. Gorham's testimony. It comes down to this: Your answer, your spontaneous answer to Senator Bennett—and you are a very practiced attorney, you are careful with words; you are not a Secret Service officer, you're not a Park Police officer. Your trade is words, Mr. Nussbaum.

Mr. NUSSBAUM. Just like yours is.

Mr. CHERTOFF. That's correct.

Your answer to Senator Bennett was, "I was trying to get the facts about the finding of the note." So my question to you is this. Is your position now on that statement that you want to amend that answer?

Mr. NUSSBAUM. No. My answer in the record, my full discussion with respect to this matter, doesn't require amending that particular answer, because my full discussion discussed not only the finding of the note, but the finding and the creation of the note. And you know, Mr. Chertoff, that it's not really—I don't want to use the word "unfair," but it's not totally cricket to pull out one little snippet as if this gives sort of an insight into my character. Read all my testimony, and you'll see what my character is like with respect to these issues. When I testified before this hearing, I testified on the basis of my recollection, my best memory. And when I reconstructed in some fashion, or tautologically, as we get to do in a dialog, I normally would indicate that's what I'm doing.

Mr. CHERTOFF. Well, Mr. Nussbaum, let me just say personally—you are a very challenging witness to question.

Mr. NUSSBAUM. And you are a very challenging interrogator, Mr. Chertoff.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Senator Kerry.

Senator KERRY. I just wanted to make an observation. In fairness, Mr. Chertoff, we've had a really excellent series of questioning and rounds through all the witnesses through these entire several weeks. Occasionally, however, there's a tendency, probably among everybody, to try to find the meaning one's looking for. In fact, one Senator at one point actually said, "That's the answer I'm looking for."

I think that, in fairness, I understood the answer to be sort of New Yorkese, I guess, about the finding of the note. Well, there are all kinds of questions surrounding the finding of a note. How did it get there is number one, and who better to ask than his secretary? Do you know when he wrote it? I just think that one shouldn't overreach in the final moments of what has been a good effort here. I think that the witness' answer, as he said, stands well on the record; that he covered a great deal more in the context of what he was asking than just the finding.

The CHAIRMAN. Mr. Ben-Veniste.

Mr. NUSSBAUM. Thank you, Senator.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

Mr. Nussbaum, questions were asked about the Travel Office file, and I wonder whether we could put up on our machine page 3 of Mr. Spafford's handwritten notes.

[Pause.]

Could we sort of zoom in on where the yellow underlining is?

On page 3 of Mr. Spafford's notes, wherein he is recording the various items which are specifically alluded to by you during this procedure, is the notation White House Travel Office Management—and then it looks like "rule." I don't know if we can make that to "file," but is that what you were alluding to before that you specifically described?

Mr. NUSSBAUM. Yes. I actually have a distinct memory of mentioning, this is the White House Travel Office file or review or something like that, because I remember saying—it's one of those things that sticks in your mind—you may have read about this in the newspapers, because this issue had been bandied about at that time. So that is what I was referring to.

Mr. BEN-VENISTE. Now if we could turn to Z346, and put that up on the screen, Mr. Sloan took detailed notes as well. At page 7 of 16 pages, which is denominated Z346, if you look right above the underlined standards of ethical conduct, can you see what those WHTO—Management Review—

Mr. NUSSBAUM. Yes.

Mr. BEN-VENISTE. And what does that refer to?

Mr. NUSSBAUM. White House Travel Office and then next to it, it says Management Review, because there was a management review contained in the file, although it's not the whole file, of how the Travel Office matter was handled in the White House.

Mr. BEN-VENISTE. Thank you very much.

Is it your testimony, Mr. Nussbaum, that having described the existence of the White House travel management file on the 22nd, then the note is disclosed on the 27th to the Park Police and the Department of Justice—that no one from the Department of Justice or Park Police, thereafter, made any request to review that material?

Mr. NUSSBAUM. That's correct.

Mr. BEN-VENISTE. We have all reviewed that material now, because as you have seen, Mr. Chertoff has held it up and displayed it, and it appears to have nothing to do with anything that the investigators were interested in reviewing on July 22, 1993.

You were asked a question with respect to the Presidential Records Act, and asked whether you felt it was necessary to do any research about whether the Presidential Records Act in somehow or way or manner impeded, or would have restricted you, from transferring the personal, financial and investment records, and real estate files and tax return information that was in Mr. Foster's office to the Clintons' personal attorneys.

Let me ask you. In July 1993, did you feel that you had sufficient knowledge and familiarity with the Presidential Records Act so that no research was necessary on that subject?

Mr. NUSSBAUM. Yes, I did. I felt that then.

Mr. BEN-VENISTE. Why would the Presidential Records Act, in your view, not pertain in this case?

Mr. NUSSBAUM. Two reasons, two basic reasons. This can become a technical subject.

One, the Act contemplates, as I've indicated in my testimony here before, that there will be personal records in the possession of the President in the White House, and he's finally entitled to those records at the termination of his Presidency. It was clear to me that these kind of records, these personal financial records, would fall under the rubric of personal records, because they were not involved in the transaction of Government business.

But there was another, more important point, which I made a little too quickly, maybe, to Mr. Chertoff. I also understood at the time the basic principle that because we had a lot of battles about some of these issues in litigation in my first 6 months, that during the President's term in office, he has total control over his records, and he can keep them almost any place he wants. He, in other words, can send a Presidential record out of the White House. He can send a draft of a speech, which is a Presidential record, to an outside advisor to read it and send it back to him.

So you can move Presidential records out of the White House. It's at the end of this Presidential term that you have to make a decision to segregate Presidential records from personal records. So just because I move the record out, even if I prove to be wrong, in other words—even if this personal file was not a personal record, but a Presidential record, it still doesn't violate the Presidential Records Act. If we don't bring it back at the end of President Clinton's term, then it might violate the Presidential Records Act.

I understood that concept. I understood as long as the President was President, during the term of office, we had control of where the records should go. But my basic thing was, I knew this was a personal record, that the Act contemplates personal records, and personal records can be sent to the President.

Thank you for letting me make my explanation.

Mr. BEN-VENISTE. Thank you. I think it's been a long day and a half of testimony. I want to thank you for your testimony here, Mr. Nussbaum.

Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I think we're finished.

The CHAIRMAN. I think Mr. Chertoff has one question.

Mr. CHERTOFF. Something that Mr. Ben-Veniste brought up just brings back one last—it's like the re-re-redirect, you get a re-re-recross.

You're not telling us, are you, that on July 22, when the documents were moved, that you considered yourself to be the staff expert on the Presidential Records Act, are you?

Mr. NUSSBAUM. I'm not telling you that. But I had a basic idea, because I had discussed this with Steve Neuwirth, who actually was more of a staff expert on the Presidential Records Act. I had a knowledge of the basic concepts of the Act, but every nuance I didn't know, no. And I still don't know.

Mr. CHERTOFF. The expert was Neuwirth?

Mr. NUSSBAUM. He was more familiar with it than anybody else. Neuwirth had only been in the White House Counsel's Office also for 6 months at that time.

Mr. CHERTOFF. Did you call him in and ask him to kind of take a look at stuff on the 22nd?

Mr. NUSSBAUM. I was in contact with Neuwirth all the time. But I don't remember discussing this issue with him.

Mr. CHERTOFF. Well, in fact, your answer in your deposition on page 403, line 6—actually, we'll begin with page 402, line 20.

Question: Would you agree with me that one of your functions as White House Counsel is to advise on the legal requirements of the Presidential Records Act?

Answer: That's correct. And one of my staff members was familiar with the Act.

Question: And who was that?

Answer: Steve Neuwirth.

Question: Did you ask Mr. Neuwirth to come in and give advice concerning whether any of these documents could be moved under the Presidential Records Act?

Answer: No.

Mr. NUSSBAUM. That's just what I testified to.

Mr. BEN-VENISTE. Mr. Chairman, I think we've gone right for the capillary here.

The CHAIRMAN. Now that we've found the capillary, I'm going to say that it is my intention to have subpoenas issued—I hope that the Ranking Member would join me in this request, so that we don't have to seek a vote of the Committee—for the telephone logs at the telephone company, for the Rodham residence in Little Rock, Ms. Williams' residence, and for Ms. Thomases on the dates in question. I believe the dates are the 22nd and the 26th; the subpoena, obviously, will be more specific. I hope that we can do this together.

One of the reasons I take this step is that there has been contradictory testimony, and hopefully we may be able to get more definitive time as it relates to certain calls that were made between the various parties—Mrs. Clinton, when she received phone calls.

And let me tell you what I'm talking about. There have been a number of contradictory, different recollections on rather critical issues. For example, Ms. Williams says that she took the Clintons' personal files to the White House residence. Mr. Nussbaum says that he asked her, he discussed that with her, and she denies this. She has no recollection of that. She said she was too tired to wait.

Last week, Mr. Castleton, the younger staffer who actually carried the files to the residence, testified that Ms. Williams told him that the First Lady would review the files. Ms. Williams again, at page 144 in her testimony, denies that, and she says that she wouldn't tell an intern something like that.

Then I was amazed that just this past Monday, another significant contradiction—certainly an area that has to be resolved—by the First Lady's Chief of Staff and former Chief of Staff Mack McLarty. He testified that he notified Mrs. Clinton about Mr. Foster's death, calling her in Little Rock after 9:00 p.m. Maggie Williams told this Committee that Mrs. Clinton called her from the airplane before she landed and told Ms. Williams to sit by and to wait for a call back when she landed.

The fact is that, after the plane landed at 8:40 Eastern Time, Mrs. Clinton told Ms. Williams about the Foster death. Now, did indeed Mrs. Clinton make that first call from a land line in Little Rock? Did she call from an airplane? Who did inform Mrs. Clinton, and when did she know? The times just do not and the accounts just do not match up.

Some of these contradictions may be able to be explained away. But I think that we have an obligation to get to the bottom of that. And so in an effort to do that, and in an effort to hopefully get a little more clarity as to how many phone calls were made and where they went, from Ms. Thomases to Ms. Williams to the First Lady and vice versa, I believe it is necessary to get those records from the telephone company. So we will proceed along that line.

Other Members have suggested different things. But I would prefer not to have to bring back witnesses, and the Ranking Member and I have discussed this. In order to expedite and move these hearings, I think that we could do it on this basis. I just want to conclude this aspect—

Senator SARBANES. I want to speak on this.

The CHAIRMAN. Certainly.

I wanted to conclude this aspect by thanking Mr. Nussbaum for his cooperation—oh. Let me also say this, because I think it's very important. We have requested, and there is a very real question, as it relates to whether there were indices more complete than the one that we have seen. Mr. Chertoff has raised that today, but it really goes to an issue that I believe that Senator Bond had spoken to. He was interested in seeing whether they can, from the hard drive, the computer that Ms. Gorham used, recreate or get additional information.

I have been advised by Judge Mikva, the White House Counsel, that he has asked the FBI to examine the hard drive of the computer of Mr. Foster's Executive Assistant. They have agreed to provide the Committee with the results of the FBI's examination of the hard drive. So I think we want to let that be known.

Senator SARBANES. Mr. Chairman, let me just make this observation. First of all, the effort that's going on with respect to the computer was in response to a joint letter that you and I sent.

The CHAIRMAN. Oh, yes.

Senator SARBANES. On the telephone records, as I understand it, all the parties are voluntarily prepared to provide us this information. And it seems to me that, as we have done heretofore, we ought to proceed on that basis. If, in fact, there proves then to be a problem, I think we can examine the question of issuing subpoenas. But when you have people that are in effect saying, we're willing to work with you and cooperate with you and get these records, I think we should follow that path. I have no reason to expect any problem, but if for some reason a problem arises, then we could address the question of issuing the subpoena.

The CHAIRMAN. Here's the problem. In the past, Senator, we have asked exactly for that. We have not received cooperation from recipients of this request. We've been told records are unavailable, et cetera.

Now, I believe that in order to expedite this—and by the way, if the parties agree, and I think that it can be done relatively—it would have to be done before we leave today—to send a letter; we can draft a letter, both counsel, which would indicate that those records by the telephone companies be made available to this Committee—

Senator SARBANES. I thought they had sent us that as indicated.

The CHAIRMAN. No, they have not. I don't need or want a conditional response. I have agreed and I think both counsels—we have agreed that we're not looking to find out every phone call that was made, but we are interested in phone calls that were made to people in official positions, the White House, those people whom the Committee are examining, et cetera. But we're not interested in phone calls made to people outside of the scope of this investigation.

Now, if counsels can agree to the methodology to provide that production in a reasonable fashion—not that it's going to be made subject to someone's attorney reviewing it and then deciding, but rather the attorneys here—that's fine. But up until now, we have not been able to have that, or at least get the parties to agree. Therefore, before we leave for the next 3 weeks, I want to be in a position to say that if we can't do that, that we're going to vote subpoenas out.

Senator SARBANES. Well, let's do this, because my perception of the letters that we got from people was that they were more forthcoming than you have just indicated. Why don't we have counsel work on that, along the path of getting a voluntary compliance, which I think is always preferable. And then we can address the issue you've raised in the aftermath of that.

The CHAIRMAN. Senator, that's the way we've proceeded. But I'm going to ask Mr. Chertoff to give a summary, so that maybe those individuals who are concerned will listen. Because I think most of them have an understanding, and if I say we're going to do something, we will do it either way. If we give a pledge, we keep that pledge, or we try to. But go ahead, Mr. Chertoff.

Mr. CHERTOFF. I wanted just to put it, Mr. Chairman, in perspective a little bit.

We have been proceeding basically on a voluntary basis, where we've requested things and we've received them. And when we've been told, for example, that the recipient of the request has exhausted their ability to provide documents, we've accepted that representation.

The reason we originally talked about a subpoena was because we were told that certain records, which we had clearly asked for and had not received, we believed were not accessible to the individuals we had made the requests of, and therefore we took the customary next step, which is to go to the phone company. And for that, you need a subpoena.

To hear now that, oh, well, actually we could get that stuff for you, is to I guess call into question the earlier representations we had gotten, that everything that could be given to us was given to us. I assume that the letters that we send, that Mr. Ben-Veniste and I send, are meant to be taken seriously; and that if somebody says they have complied, they have in fact exercised all of their ability, all of their custody, control, and possession in responding.

The CHAIRMAN. If I might interrupt you, I want the record to clearly understand this has absolutely nothing to do with Mr. Nussbaum.

Mr. CHERTOFF. Correct; nothing to do with Mr. Nussbaum.

Mr. BEN-VENISTE. Mr. Chairman, let me add something to that, because I have a slightly different take.

The CHAIRMAN. Mr. Ben-Veniste, I will let you do that. But let me tell you the bottom line, as far as I'm concerned. The bottom line is that, either we're going to be assured by the end of the day by the respective parties that there is a manner, a methodology of producing these documents, or as far as I'm concerned, I am then going to ask the Committee to issue subpoenas.

Senator SARBANES. Well, I think we should try to work it out by the end of the day in a voluntary way.

The CHAIRMAN. Sure.

Senator SARBANES. I think that if people are being faulted because they did not take the step of asking the phone company, then I think that point should be made to them, and we may be able to work this thing out.

Mr. BEN-VENISTE. That was my point, Senator Sarbanes; that we had previously asked for all documents in the custody of the various witnesses. And where phone records from years ago are not in the possession of the individual witnesses, the next step is to try to get them from the phone company. So that I think where we are now is, they have agreed to request those records from the phone company themselves. I think we can work it out.

Mr. CHERTOFF. I just want to complete the record on this, and I think we should probably make part of the record our letters of June 30 and July 11.

The CHAIRMAN. I think both letters should be submitted.

June 30, 1995

Robert J. Giuffra, Jr.
Chief Counsel

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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
 URBAN AFFAIRS

WASHINGTON, DC 20510-6075

July 11, 1995

VIA FACSIMILE AND MAIL

Susan Thomassess, Esq.
 Willkie, Farr & Gallagher
 153 East 53rd Street
 New York, New York 10022

Dear Ms. Thomassess:

On May 17, 1995, the Senate passed Resolution 120, a copy of which is enclosed, establishing a Special Committee administered by the Committee on Banking, Housing, and Urban Affairs to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings and Loan Association, Capital Management Services, Inc., the Arkansas Development Finance Authority, and other related matters.

As part of this investigation, we hereby request that you make yourself available for a deposition on Friday, July 14, 1995. If you are unavailable on July 14th, we could schedule your deposition for Monday, July 17th.

In addition, you may have custody, control, or possession of records that relate to matters specified in the Resolution and listed below. Accordingly, please provide all records, regardless of format, including, but not limited to, e-mail, electronic "dump files," memoranda, correspondence, phone message slips, notes, and records in any other medium, including drafts of any of the foregoing, that relate in any manner to the following: (1) the investigation of the death of then Deputy Counsel to the President Vincent Foster; (2) the handling of all documents that were in the office of Vincent Foster at the time of, or following, his death on July 20, 1993; and (3) any communications with regard to these matters.

Your response should include, but not be limited to, all records of telephone conversations or wire communications, including, but not limited to, phone logs, copies of message pads, and electronic or written records, relating to communications that took place, between 5 p.m. on July 20, 1993 and July 22, 1993, between:

1. Susan Thomasses and Hillary Rodham Clinton;
2. Susan Thomasses and Bernard Nussbaum or anyone else from the White House Counsel's Office;
3. Susan Thomasses and Margaret Williams or anyone else from the First Lady's Office; or
4. Susan Thomasses and David Kendall.

If any records are withheld based on the assertion of privilege, please provide a log identifying the date, author, any and all recipients, the subject matter of any such records, and the basis of the privilege asserted.

The records should be delivered prior to your deposition to Joseph Kolinski, Chief Clerk, 534 Dirksen Senate Office Building. You may submit copies in response to this request but the Committee reserves the right to obtain the original records.

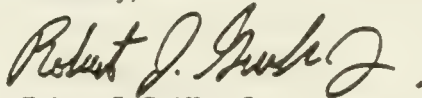
If you have any questions about this request, please contact Alice Fisher, Associate Special Counsel to the Special Committee at (202) 224-0418.

Your cooperation in this matter is greatly appreciated.

Sincerely,



Lance Cole
Democratic Deputy Special Counsel



Robert J. Guiffra, Jr.
Chief Counsel

Mr. CHERTOFF. We have requested in each instance documents in the custody, control, or possession of the recipient of the subpoena. And that typically means not only things which are in your physical possession, but things which may be in someone else's possession but which you have access to.

On a going-forward basis, I hope the point that we can make is that we shouldn't have to find out that we didn't get a complete response after we're almost done with the hearings, but that we should get a complete response when the initial letter is sent.

Mr. BEN-VENISTE. Fine.

The CHAIRMAN. We're going to adjourn for 10 minutes—take a 10-minute recess so that Mr. Margolis can proceed. We thank you for your cooperation, Mr. Nussbaum.

Mr. NUSSBAUM. Thank you, Mr. Chairman.

[Recess.]

The CHAIRMAN. Mr. Margolis, would you stand just for purposes of the oath?

SWORN TESTIMONY OF DAVID MARGOLIS, ASSOCIATE DEPUTY ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

The CHAIRMAN. First of all, Mr. Margolis, we are wishing you a continued recovery. We are deeply appreciative that you, number one, have come in, and we're anxious to hear your statement.

Mr. MARGOLIS. Thank you, Mr. Chairman. I have a brief opening statement.

My name is David Margolis. I am currently an Associate Deputy Attorney General at the Justice Department, and I work for Jamie Gorelick, the Deputy Attorney General.

My opening statement will be brief. Because I was not asked until last night to testify this afternoon, I have not had an opportunity to provide this opening statement to the Committee in advance, as is the normal practice. I believe the Members have it now. Because I have not been deposed in this matter, I would like to give the Committee a brief summary of my career.

In 1965, shortly after I graduated law school, then-U.S. Attorney Jon Newman hired me as an Assistant U.S. Attorney in my home town of Hartford, Connecticut. I held that position until 1969, when I joined the Department of Justice's Organized Crime and Racketeering Section, the Boston strike force.

In 1971, I was promoted and became the attorney in charge of the organized crime strike force in Cleveland, Ohio. I held that position until 1975, when I went to Brooklyn to head the organized crime strike force in Brooklyn.

In 1976, I moved here to Washington, to become a deputy chief of the organized crime section. And in 1979, then-Assistant Attorney General Philip Heymann promoted me to the position of chief of the organized crime section.

In 1990, then-Assistant Attorney General Edward S.G. Dennis appointed me Acting Deputy Assistant Attorney General in the criminal division, a position I held in an acting capacity until May 1993, when Mr. Heymann, who had been nominated by President Clinton to serve as Deputy Attorney General, asked me to join his staff as Associate Deputy Attorney General. That's the position I still hold.

Before I take this Committee's questions, I would like to explain the timing of my appearance today, especially since I'm advised that there is at least one erroneous media report on it.

As the Chairman indicated this morning, on June 15, 1995, I had extensive coronary surgery, a quadruple bypass operation, on an emergency basis. A few weeks later, I told my surgeon that the Committee had requested my testimony. He indicated that he would not permit me to testify, at least until the week of August 7, when the extent of my recovery would be re-evaluated. The Department of Justice so advised this Committee by letter of July 12.

On this past Tuesday afternoon, August 8, following a previously scheduled physical examination by my internist, he advised me that I had recovered sufficiently to testify in these proceedings. Because the Department had an obligation to advise the Committee of my progress, the Department faxed a letter to the Committee yesterday, advising that I was now available. In response, Committee staff called last night and requested that I appear today.

I understand that the Committee has had a longstanding request for my testimony, and only on Tuesday was I told by my doctor that I am physically fit to do so. So that the record is clear, I have not requested to testify at these hearings, nor did I ask to testify today. As a matter of fact, I can think of few places I would less rather be than testifying here this afternoon.

I am appearing in response to last night's request from the Committee staff. Because of my surgery, I have not had an opportunity to thoroughly review the documents provided by the Department to the Committee, although of course I have seen some of them before, and I was the author of at least one of them. Therefore, I ask the Committee to bear with me if I need some time to refresh my recollection on occasion.

Finally, I appreciate the Committee's willingness to accommodate my medical condition. In the event that I need to take a break, I will certainly let you know.

Thank you.

The CHAIRMAN. Mr. Margolis, we thank you, particularly for your circumstances. I want to deal with this as expeditiously as possible. Your testimony and your knowledge in this matter is important, so we are deeply appreciative. We're attempting to wind up this part of our review of the entire situation up. That's why your participation today helps us immeasurably. So we thank you.

At this point, I'll turn to Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Margolis, we appreciate the fact that you haven't had perhaps as much opportunity to review documents as other witnesses because of your condition. I take it you have before you a copy of some notes in Phil Heymann's handwriting, and a copy of some notes in Cindy Monaco's handwriting?

Mr. MARGOLIS. No, I don't, Mr. Chertoff. I don't have anything but my own statement.

Mr. CHERTOFF. Could I ask if the Department lawyers have those notes? Otherwise, we will provide a copy of those.

[Document handed to witness.]

These are deposition exhibits TH-1 and F-154 through F-159. And if it helps you to refer to those in refreshing your recollection, we wouldn't have a problem with that.

Am I also correct that you have seen these documents before?

Mr. MARGOLIS. Yes.

Mr. CHERTOFF. Before I get into these documents in substance, I want to give you an opportunity to clarify something I know troubled you when it appeared in the paper, and just do it very briefly.

There was a leak about something entitled, "Vince Foster Moot Court Media Questions" which had been authored by you. Just to give you the opportunity to finally set it straight, will you tell us what this document was?

Mr. MARGOLIS. Yes. Just about the same date that I authored that document, the then-Deputy Attorney General Phil Heymann had said to me, "David, I want you to sit down and make me a list of the nastiest, most mean-spirited, vicious questions that the media could ask me, Phil Heymann, at a press conference about Vince Foster's death."

I remember saying to him, "You know, Phil, I think if we're going to do this, let's just sit down and go over them orally." And he said, "No, we're both busy. I'm going to be running. I need something I can look at." So he said, "Just sit down and write it out."

While it indicates it's on E-mail, Mr. Heymann wasn't a Member of E-mail. So when I did these questions, I had to send them to myself, then have them printed out and hand them to Mr. Heymann, which I did. He read them. I said, "Do you want to discuss these?" And he said, "Boy, they are as nasty, as I asked for."

But we decided eventually what to do is, at the press conference, he would introduce the Park Police Commander and the FBI SAC. Then he would let them handle the questions. Fortunately, the questions were not this nasty. But the important thing—these were hypothetical questions.

Mr. CHERTOFF. We haven't deposed you, obviously, so I'm just going to start from the beginning.

I want to direct your attention to July 21, 1993. There was a point in time that you and Roger Adams were asked to go to the White House by Phil Heymann. Correct?

Mr. MARGOLIS. Correct.

Mr. CHERTOFF. Will you tell us when you got there whether at some point you had a meeting with White House Counsel Bernie Nussbaum?

Mr. MARGOLIS. Yes.

Mr. CHERTOFF. Both you and Mr. Adams were there?

Mr. MARGOLIS. Yes.

Mr. CHERTOFF. Were there other members of law enforcement there?

Mr. MARGOLIS. I believe Captain Hume was there from the Park Police. I believe at least one FBI agent was there, and there were some members of Mr. Nussbaum's staff who were there.

Mr. CHERTOFF. Would you tell us what occurred in that meeting?

Mr. MARGOLIS. Yes, and I should go back to my previous discussion with Mr. Heymann, when he told me to go over there.

To give it the full background, he had called me up from a meeting, and he said, "I want you to go over to the White House with

Roger Adams." He said, "Vince Foster is dead. There's an investigation of it." I had seen the headline of that in the newspaper that morning.

He said that he had reached a tentative agreement with Mr. Nussbaum that Roger and I were to go through at least the first page or two of each document in order to determine whether they were relevant to our investigation. What we would be looking for would be, obviously, either a suicide note or something that could be characterized as a suicide note, or some other bright-line item which would indicate a reason for Mr. Foster to take his life, such as an extortion letter or anything like that, or anything else that jumped out at us that would indicate a reason for taking his life—that we would go through at least the first page or two of each item and make a call as to relevancy.

And then, as to matters that were relevant that White House Counsel thought might be privileged, you know, we put them aside and debate that later on. Phil told me that he believed he had an agreement in principle with Bernie Nussbaum to do it that way, so I should go finalize it and then begin the search process.

So, that's why I was there. When we got there, I discussed it with Mr. Nussbaum. I believed then, and I believe today that we finalized that agreement, and that we both agreed to it.

When we finished, Mr. Neuwirth on his staff, as I recall, attempted to restate the agreement, and got it what I believe was exactly wrong, and said, "The way we're going to do it is that Bernie will go through the documents, and he'll give you what is both relevant and nonprivileged to review." I said that that's exactly wrong. We just agreed to the other procedure. It was my recollection then, and it's my recollection today, that Mr. Nussbaum agreed with me that Mr. Neuwirth was wrong, and that we had that other agreement.

We then agreed that it was late in the afternoon, and that we would actually start the search at about 10:00 a.m. the next morning. So we adjourned at that time.

Mr. CHERTOFF. I want to just go back to earlier in the day. At the time that you went over, I take it, you understood, or you had a general sense this was a suicide?

Mr. MARGOLIS. Yes.

Mr. CHERTOFF. At the same time, was there a final determination about that, or was there still the possibility of some other reason for death?

Mr. MARGOLIS. Absolutely. It was just a feeling that Phil had, based on talking to the Park Police, that Captain Hume reinforced when I met with him that evening over at the White House. But it was only tentative, and our purpose was to find out whether, in fact, there was a suicide.

As a matter of fact, I remember telling Mr. Heymann before I went over there that I would feel more comfortable if we got the FBI involved, for two reasons. First, I was use to working with them, and knew their capabilities. And second, in the event that it was an assassination of a Federal official, in the event that's what it turned out to be, I obviously wanted the Bureau involved.

Phil called Captain Hume to try that out on him, and Captain Hume advised that, following their usual procedure, the Park Police had already gotten the FBI involved.

Mr. CHERTOFF. So the FBI was actually there on the 21st when you met with Mr. Nussbaum?

Mr. MARGOLIS. Exactly.

Mr. CHERTOFF. Let me direct your attention to later, after you left the White House. On the 21st, did you go back and report to Mr. Heymann?

Mr. MARGOLIS. I either did that night or first thing the next morning, I don't recall which.

Mr. CHERTOFF. Can you tell us what you told Mr. Heymann about what had been agreed upon on the 21st with Mr. Nussbaum?

Mr. MARGOLIS. Yes. I told him along the lines that he had thought he had reached a tentative agreement with Bernie Nussbaum; that Roger and I would review at least the first page or two of each document, to determine whether it might contain something along the lines of an extortion note or a suicide note. So it was the agreement that he had reached.

Now, we all knew at that time that it was theoretically possible that a document that looked totally irrelevant on its face, on page 68 would have a footnote that says, "I'm killing myself because of such-and-such." That was a risk we realized we were running.

Mr. CHERTOFF. Let me direct your attention to around 10:00 a.m. on the morning of the 22nd. Did you go over to the White House with Mr. Adams?

Mr. MARGOLIS. Yes.

Mr. CHERTOFF. Did you go over with the FBI and the Park Police, or did the two of you go by yourself?

Mr. MARGOLIS. We went by ourselves. The agents were already there interviewing people in the same general area of, I guess you would call it the West Wing. But they were already at work interviewing people.

Mr. CHERTOFF. Did you get involved in the interviewing process yourself?

Mr. MARGOLIS. No. Occasionally, a Park Policeman would come out and tell me something when I was waiting in the lobby, but I wasn't involved in any of it.

Mr. CHERTOFF. Did there come a point after you arrived at the White House that you and Mr. Adams met with Mr. Nussbaum?

Mr. MARGOLIS. Yes.

Mr. CHERTOFF. Do you remember who else was present with Mr. Nussbaum?

Mr. MARGOLIS. At least off and on, and perhaps continually, it would have been Cliff Sloan and Steve Neuwirth.

Mr. CHERTOFF. Would you tell us what the discussion was on in that first meeting with Mr. Nussbaum?

Mr. MARGOLIS. He said that there's been a change of plans, and that he would look at the materials because of their sensitivity, executive privilege, attorney-client privilege issues, national security issues, sensitivity issues—that he would look at the materials to determine whether they were relevant, make the first cut, and determine the privilege issues and the sensitivity issues. Then any-

thing that met all his standards along those lines, if we still wanted to see, he would show to us.

Mr. CHERTOFF. What did you say in response?

Mr. MARGOLIS. I said to him, "Have you discussed this with Phil?" He said, "No." So I said, "I think that's the first thing that's got to happen." And so he was kind enough to let me use his office, and I called Mr. Heymann and explained this change to him. We discussed it. We were both dead-set against it. So he was going to talk to Mr. Nussbaum, which he did, and then I was going to talk to Mr. Nussbaum. We were going to take it as far as we could, pushing to go back to the agreement we thought we had before. We thought that was very, very important.

But the bottom line was, if we couldn't change Mr. Nussbaum's mind, then we had to make a decision whether to walk away or go along with his procedure. And while it was a close call, I recommended—and I believe the Deputy agreed—that we really had no choice. Walking away was not really an option, because we had no sense of when the search would be conducted by Mr. Nussbaum, and what the parameters would be, and just what would happen, although we agreed we had to push with all our might to try to change it around. And that's what we did.

Mr. CHERTOFF. You've recounted to us what was your conversation with Mr. Heymann?

Mr. MARGOLIS. Yes.

Mr. CHERTOFF. You said you were both dead-set against the procedure Mr. Nussbaum outlined. Can you explain to us either—well, was this actually something—were the reasons for this discussed with Mr. Heymann, or was it something you and Mr. Heymann had previously talked about?

Mr. MARGOLIS. No. This caught me by surprise, and I know it caught him by surprise, because I had told him either the night before or before I left that morning that we had a different deal.

We were very concerned as to how this would appear to the public in terms of law enforcement, and in terms of whether we were running a credible investigation. And—God forbid, but appearances being one thing, if we weren't running a credible investigation regardless of appearances, if we missed something because of the way we were doing it, there could be all hell to pay. So it was very important to us, both in terms of perceptions and fact.

Mr. CHERTOFF. Did you express this concept you've just told us about to Mr. Nussbaum?

Mr. MARGOLIS. Subsequently, yes.

Mr. CHERTOFF. When did you do that?

Mr. MARGOLIS. After Mr. Heymann talked to him. Mr. Heymann—then I gave the phone to Bernie, he came in and he talked to Phil. And when it was over—

The CHAIRMAN. About what time was this, Mr. Margolis?

Mr. MARGOLIS. Those conversations probably ended around 10:30 or 10:45 a.m. That's a rough guess, Mr. Chairman.

Mr. CHERTOFF. Go ahead.

Mr. MARGOLIS. I explained to Mr. Nussbaum that to do it his way would be a big mistake. I said, "It is your mistake if you do it this way, but it is a big mistake."

I think it was at that point when I also said to him, "You know, if this were IBM that we were talking about, I would have a subpoena duces tecum returnable forthwith for these documents. But I recognize this is not IBM." And he made a facetious comment about, if this were IBM rather than the White House Counsel's Office, a smart lawyer would have removed the documents before the subpoena ever got there, ever arrived there. That I took as a facetious comment.

Anyway, he wasn't talking about what he would do. I also talked about the public perceptions being very important, and that if we did it his way, as far as I was concerned, that Roger and I and the investigators would be excess baggage. There would be no reason for us to be there, and that we had better things to do. I recall telling him I might as well go back to my office, and he could mail the results of the search back to me.

He responded by saying that he recognized that a lot of the reason for having us there was for show and for appearances, but it was very important. Then he said that he would think about—he was obviously concerned about the arguments made, and he said he wanted to think about them before he reached a final decision. So Roger and I went downstairs to the lobby and waited.

He made it very apparent that he would be really appreciative if we didn't leave in the interim. I think I had said something about, "Maybe in any event I'll go back to the office while you're thinking about it, and I can always get back here in 15 minutes if I decide to and if I want to and if I have to." But he very much requested that we just wait.

Mr. CHERTOFF. Did he explain why he wanted you to wait?

Mr. MARGOLIS. He did not. I suspect that the power of inertia would always be on his side if we were there. Whereas if we were back at the Department, he'd actually have to get us to come back there. As he said, it was very important to him that we be there. And on the bottom line, that while it was a closer question for us, I thought, if we couldn't talk him out of this, that we should be there.

Mr. CHERTOFF. I just want to go back a little bit because you have been relating your conversations with Mr. Nussbaum, but am I also correct that you were in the room while Mr. Nussbaum was talking to Mr. Heymann?

Mr. MARGOLIS. No.

Mr. CHERTOFF. So that was a private conversation?

Mr. MARGOLIS. Yes. Private from me and Roger.

Mr. CHERTOFF. Did Mr. Nussbaum, in the course of your subsequent conversation with him, tell you what Mr. Heymann had said?

Mr. MARGOLIS. I don't think so, because I basically knew what Phil said.

Mr. CHERTOFF. Now, where did you go after you had this discussion with Mr. Nussbaum and he indicated that he wanted you to stick around?

Mr. MARGOLIS. Roger and I went down into the lobby of the building because it's a very small area up there outside Mr. Nussbaum's office and Mr. Foster's office, and we were basically in the way, I thought.

Mr. CHERTOFF. What happened next?

Mr. MARGOLIS. At some point while we were waiting, I said to Roger I wanted to go outside and have a smoke, something that I would not say today.

Mr. CHERTOFF. I hope not.

Mr. MARGOLIS. So we did go outside, and Bernie and Cliff and Steve Neuwirth eventually came out to find us. Bernie had said he had thought, when he couldn't find us in the lobby, that we might have left and he was concerned about that. He said it wouldn't be much longer, please wait. So we did.

Eventually, Cliff came down and said, "Why don't you have lunch, and we'll start," he either said, "at 1:00 or 2:00 p.m.," whatever 30 minutes from then was, and I can't remember which it was.

So we ate, we came back in, and that's when Bernie told us he had given due consideration to our arguments, he thought they were good arguments, but he was sticking with doing it his way, which was he would review the documents, tell us generically what they were, if there wasn't a problem with them and if they had any sense of being germane, let us look at them.

Mr. CHERTOFF. What did you say?

Mr. MARGOLIS. I said, "That's a mistake." And I think that might be when I said, "But it's your mistake. So, OK."

Mr. CHERTOFF. By the way, you used the term earlier, subpoena duces tecum forthwith. Could you just explain, for the nonlawyers on the panel, what that means?

Mr. MARGOLIS. Yes, that would be a subpoena, it was a grand jury subpoena I was talking about, to bring certain records with him and produce them before the grand jury immediately.

Mr. CHERTOFF. Now, after Mr. Nussbaum indicated you were going to go forward with this in the way he wanted to, did you and representatives of the FBI and the Park Police and the Secret Service, in fact, go with Mr. Nussbaum into Mr. Foster's office?

Mr. MARGOLIS. We did.

Mr. CHERTOFF. Would you describe to us what occurred then?

Mr. MARGOLIS. Yes, it was not a big office, so it was rather crowded, and we all sat down in layers, and I sat in the first row. Mr. Nussbaum sat behind Vince Foster's desk with Mr. Sloan and Mr. Neuwirth standing behind him, and he went through the items on, in, and around Mr. Foster's desk and announced what they were, generically, like, "This file is a file of nominations that Vince was working on for the President. It's not germane. This is a matter that Vince was working on for the First Family in their nonofficial capacity. It's not germane." Things like that.

Mr. CHERTOFF. Did he show you any documents?

Mr. MARGOLIS. I think he offered us a couple of documents, offered the Park Police a couple of documents that they took. As a matter of fact, one, I believe, was a calendar and a couple of others that he gave directly to the Park Police.

Mr. CHERTOFF. Did you have any idea what were in the documents that he was describing to you beyond the description he chose to give you?

Mr. MARGOLIS. No, I have a vague sense of at some point complaining that the problem here was to protect the interests he was

trying to protect, the descriptions had to be so generic that they weren't really of much assistance.

Mr. CHERTOFF. Was there any incident—we have gone over this, but I just want to make sure we are consistent on this—with an agent standing up at some point?

Mr. MARGOLIS. Yes.

Mr. CHERTOFF. Tell us about that.

Mr. MARGOLIS. At some point I heard Cliff Sloan say, "Hey, you're not standing up so that you can read what Bernie's got in front of him, are you?" I looked around to see what was going on, and I noticed he was—Scott Salter—was standing up stretching. He had taken his jacket off, and he was standing behind me, and he said, "Absolutely not." I think I muttered an expletive at that point, and Bernie told Cliff, "No, no, no. That's not what's happening."

But I was bothered by that. So, a minute later when Cliff was looking over Bernie's shoulder at some document that Bernie was looking at, I said, "Hey, Cliff, you're not looking over Bernie's shoulder so you can read the documents that he is looking at, are you?" And he got startled for a minute, and then he said, "Hey, wait a minute. I'm authorized to do that. What are you talking about?"

Mr. MARGOLIS. And he was right, obviously.

Mr. CHERTOFF. Do you remember a point in time in this process when Mr. Nussbaum handled the briefcase?

Mr. MARGOLIS. Yes.

Mr. CHERTOFF. Tell us about that.

Mr. MARGOLIS. I think it was over halfway, perhaps two-thirds of the way, through the search and there was this briefcase, and there came time for that to be searched. So Mr. Nussbaum took it, and I don't remember specifically at this point whether he put it on the desk and pulled things out of it or whether he had it on the floor and pulled things out of it. But he did take files out of it, a number of files out of it, and then told us, I don't remember the exact language, but told us that that was it, that there was nothing more there.

I have been asked on previous occasions by others whether there could be anything; if there could have been a note ripped up or otherwise, in there. I don't know, I did not see into the briefcase, but I was satisfied that he had looked in the briefcase and had represented to us that there was nothing else in there.

Mr. CHERTOFF. Did you see him looking into the briefcase?

Mr. MARGOLIS. I cannot absolutely swear that I remember him looking in the briefcase. But all the surrounding facts and circumstances led me to believe, including the fact that neither I nor the agents said, "Hey, Bernie, stick your head in the briefcase," because on occasion I had told him when he was looking at a document, "Hey, you missed something back there." So, I am satisfied that he looked in the briefcase.

I can say with certainty that he didn't conduct the search by putting his hand in the briefcase while looking up at the ceiling. That didn't happen at all.

Mr. CHERTOFF. So your impression from him was that he was satisfied and he was communicating to you that he was satisfied that he had done a search of the briefcase?

Mr. MARGOLIS. Yes.

Mr. CHERTOFF. Was there something to do with the computer also?

Mr. MARGOLIS. Near the end, as a matter of fact, maybe right at the end, Roger noted that there was a computer in Vince Foster's office and asked Bernie if he could turn that on so that we could determine whether there was anything relevant there. Mr. Nussbaum said that he would do that at a later time and if there was anything relevant, he would let us know, but that he doubted it because he didn't think Vince was a big computer person.

Mr. CHERTOFF. What else do you recall about the events within that room during this process?

Mr. MARGOLIS. I do recall at the end—well, I do recall that the feelings—that it was tense. I do recall that, and that's one of the reasons, I think, why Cliff challenged Scott at one point and why I overreacted to that challenge.

I also remember near the end that Bernie said—there were three piles of documents. One pile was files that Vince Foster had been working on for the President as President, I will call official documents. That was going to be distributed to other lawyers in the office to move the papers along. A second pile was files that Vince Foster had been working on for the First Family in their private capacity, and that was going to be given by Bernie to a private lawyer or private lawyers to follow through on. And the third pile was materials that were personal to Vince, and he said that he would give them to Michael Spafford, who was there on behalf of Jim Hamilton and we could deal with that firm to see what we wanted or see what we needed from them.

I remember saying at that point as a bit of a knee-jerk reaction, "No. On that last pile, I want to maintain the chain of custody as part of Government—on behalf of the Government. So I want you, Bernie, to hold them, and Mr. Spafford and Jim Hamilton and we can negotiate through you, but you will hold them." That was something I said knee-jerk, like I said.

At that point, one of the agents, I am not sure which one of them, tugged my sleeve and asked me to talk privately for a minute, and he said, "I didn't want to disagree with you in front of everybody else, but we feel strongly that we would rather have the files go to Mr. Spafford and Mr. Hamilton because we would rather deal with them in the future than with White House Counsel's Office." So I thought about that for a second, and I said OK, and I withdrew my objection. Indeed, they did go to Mr. Spafford.

Mr. CHERTOFF. Now, you said that it was the category, you wanted to have a chain of custody of the documents that were moving out of Government control to Mr. Spafford.

Mr. MARGOLIS. Right.

Mr. CHERTOFF. That is why you raised the issue at that point?

Mr. MARGOLIS. Yes.

Mr. CHERTOFF. What about with respect to the other documents, the documents that were either official work or private work for the First Family?

Mr. MARGOLIS. I did not make that point because I really, at that point, I was most concerned about Vince Foster's own personal documents. So, stuff that was going to go to other people in the White House Counsel's Office was staying with the Government.

The President's personal papers I was not concerned with, although, just before I left, I suggested to Bernie that as to the two piles that remained, the President's personal papers or the First Family's personal papers, and the official Presidential documents, that he ought to very seriously consider keeping them segregated, at least temporarily, to answer questions, because I thought that there was going to be a groundswell, and I told him this, and I had been telling him all along, of public criticism of the way this had been done, and if I was right about that, he might want to have the option of going back and redoing this a different way, so that he ought to wait a couple of days and keep them segregated.

He thanked me and said he would consider that, but he really thought that it was necessary to move this process along, but he would think about it.

Mr. CHERTOFF. Did he tell you that later that afternoon he planned, in fact, to move the pile of documents that were personal up to the residence?

Mr. MARGOLIS. No, but he did—what generated this is that he told me he was going to give those personal documents to a private lawyer and so that's what caused me to say, "Maybe you better hold off a while." We didn't get into details of how it was going to be accomplished.

Mr. CHERTOFF. But you had the impression from him that he was not prepared to hold off for a while?

Mr. MARGOLIS. Yes, although he was going to think about it.

If he had told me that by the way, in the process of giving these documents to a personal lawyer for the First Family, I am going to have them moved into the White House residence temporarily, that wouldn't have troubled me at all. I mean, what I was cautioning him was, "Maybe you better keep custody for a while."

Mr. CHERTOFF. He indicated to you he would not keep custody?

Mr. MARGOLIS. That he probably wouldn't, but he would think about it.

Mr. CHERTOFF. Now, did you go back to the Department of Justice afterwards?

Mr. MARGOLIS. Yes.

Mr. CHERTOFF. And just to finish up this narrative because we are moving along, did you have a conversation with Mr. Heymann?

Mr. MARGOLIS. Yes.

Mr. CHERTOFF. Tell us about that.

Mr. MARGOLIS. I told him that it was very strange that we had lost the battle, that we had lost the war, rather, and that we did it Bernie's way and that we didn't find anything of substance, and there was a very tense situation, that we hadn't heard the end of it. I mean, I was sure this was going to get out to the public in one form or another and that the search was going to look bad and we, therefore, were going to look bad.

I also knew that if just by blind luck we had found something that solved this, that would have taken a great deal of sting out,

even though it didn't mean we did a better job or we did it more professionally. But we didn't have that blind luck.

He agreed, and I told him I just couldn't figure out why Bernie was so insistent. I mean, Roger and I didn't have the reputation of being partisans or leakers, we had the highest security clearances, we were members of the Executive Branch.

On the other hand, I conceded then and I concede now that I spent a millisecond in private practice representing people, so I am not that sensitive, as sensitive as I might be, to those issues. But I thought it was troubling, and I think I asked—I know I asked Phil to find out from—to confront Bernie and ask him why this happened, you know, was he concealing anything.

Phil told me that he did call Bernie that night and yell at him about this and confront him with my concern about whether anything was being hidden or covered up, and Bernie had assured him that that was not the case.

Mr. CHERTOFF. Now, after this, is there anything—at this point I guess my half-hour is up, and we will resume at the end of the 20 seconds when I get back.

The CHAIRMAN. We will come back.

Senator Sarbanes.

Senator SARBANES. I yield.

The CHAIRMAN. Mr. Margolis, let me say to you at any time if you feel you want to take a stretch, whatever, please tell us.

Mr. MARGOLIS. Thank you.

The CHAIRMAN. I mean, don't hesitate.

Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

The CHAIRMAN. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator.

Good afternoon, Mr. Margolis.

Mr. MARGOLIS. Good afternoon.

Mr. BEN-VENISTE. On the 21st you were contacted by Phil Heymann to go over to the White House with Roger Adams. Were you aware that Roger Adams had been selected some hours before to perform this function?

Mr. MARGOLIS. No, not until I got to Mr. Heymann's office and he told me.

Mr. BEN-VENISTE. At about what time do you remember being briefed by Mr. Heymann?

Mr. MARGOLIS. Probably 3:00 to 3:30 p.m., something like that.

Mr. BEN-VENISTE. He indicated that he and Bernie Nussbaum had had a conversation where they discussed a possible procedure for accommodating the Park Police interest in reviewing the files?

Mr. MARGOLIS. Yes, I think he described it as both a tentative agreement and an agreement in principle.

Mr. BEN-VENISTE. And under that proposal, you and Mr. Adams would look at the first page of each file and satisfy yourself as to whether or not the material was relevant in some way?

Mr. MARGOLIS. Yes, the first page or two.

Mr. BEN-VENISTE. I believe you indicated that the Park Police were looking for something pretty specific, a suicide note or some such material, setting forth state of mind or possibly an extortion note?

Mr. MARGOLIS. Blackmail. Yes.

Mr. BEN-VENISTE. You weren't ruling out extortion or blackmail at that point, obviously. But your focus or the police focus was very narrow, and you thought that reasonable?

Mr. MARGOLIS. Yes.

Mr. BEN-VENISTE. Now, when you got to the White House, do you remember about what time it was?

Mr. MARGOLIS. Perhaps a little after 4:00 p.m.

Mr. BEN-VENISTE. And where did you meet?

Mr. MARGOLIS. I believe we met in Bernie Nussbaum's office.

Mr. BEN-VENISTE. In his private office?

Mr. MARGOLIS. Yes.

Mr. BEN-VENISTE. Did he show you Mr. Foster's office, where it was?

Mr. MARGOLIS. Yes, because it was attached to his office, as I recall.

Mr. BEN-VENISTE. What do you recall having seen just by what he showed you that afternoon?

Mr. MARGOLIS. Just an office. We were standing in Bernie's office, and I think he said, "And this is Vince's office over here."

Mr. BEN-VENISTE. Did you look around?

Mr. MARGOLIS. No, I don't believe we went in. I think we were standing in Bernie's office.

Mr. BEN-VENISTE. Was the door locked, if you remember?

Mr. MARGOLIS. I could see the door—if it had been locked, he had it open for us so that we could actually see it from his office, from Bernie's office. I mean, I could look into it from Bernie's office.

Mr. BEN-VENISTE. You remember having seen it on the 21st?

Mr. MARGOLIS. Yes, that's my best recollection.

Mr. BEN-VENISTE. In the conversation, who else was present besides you, Mr. Nussbaum, and Mr. Adams?

Mr. MARGOLIS. I believe, off and on, Cliff Sloan, Steve Neuwirth, Captain Hume of the Park Police, and then at least one FBI agent, Denny Condon.

Mr. BEN-VENISTE. Were they there for the whole time, Hume and Condon?

Mr. MARGOLIS. I am not sure if people were in and out. I think Captain Hume was there for the whole time. But I am not 100 percent certain.

Mr. BEN-VENISTE. Now, is it your recollection that they were present at the end of the meeting when this conversation about what the bottom line was, what the agreement was?

Mr. MARGOLIS. I think some of them were. I think some people were standing outside in the hallway, attending the meeting by standing outside in the hallway because it was very crowded. Who was actually in the room, who was standing outside, I just remember it was Roger and I and Bernie and at least one or two—

Mr. BEN-VENISTE. Because, in fairness, neither Hume nor Condon, to my recollection, have testified that they had the understanding on the 21st that any agreement had been reached.

Mr. MARGOLIS. I just don't know.

Mr. BEN-VENISTE. So what else did you discuss besides this procedure?

Mr. MARGOLIS. I believe we discussed whether we should get started that night, break down, or wait until the next morning. Everybody agreed to wait until the next morning.

Mr. BEN-VENISTE. How long did the meeting take?

Mr. MARGOLIS. Not very long, a half-hour, maybe.

Mr. BEN-VENISTE. Did Mr. Nussbaum explain to you what was on his mind in terms of protecting the various privileges that were involved?

Mr. MARGOLIS. Either he did that, or Mr. Heymann had told me what both Bernie's concerns were when we talked and that he had some of the same concerns, so this was the best way to resolve the concerns.

Mr. BEN-VENISTE. Do you recall Mr. Nussbaum explaining to you the concerns that were on his mind?

Mr. MARGOLIS. I recall that the next morning, when I believe he changed the agreement. I don't recall it that night.

Mr. BEN-VENISTE. Would you argue with Mr. Nussbaum's recollection that he went through in some detail the concerns on his mind with respect to the various privileges?

Mr. MARGOLIS. That night?

Mr. BEN-VENISTE. That night.

Mr. MARGOLIS. I would say his recollection and mind differ sharply on that.

Mr. BEN-VENISTE. Your recollection then was that there was a very perfunctory conversation where it was agreed that you would look at the first or second page of each file?

Mr. MARGOLIS. Yes.

Mr. BEN-VENISTE. Despite the perfunctory nature of that, it is your recollection that when you summarized that Mr. Neuwirth took issue with it and said that Mr. Nussbaum would review the file?

Mr. MARGOLIS. That's correct.

Mr. BEN-VENISTE. Now let's go to the 22nd, if we can. The scope of what you were looking for did not change at all by the 22nd?

Mr. MARGOLIS. That's correct.

Mr. BEN-VENISTE. Still extremely narrow in scope?

Mr. MARGOLIS. That's correct.

Mr. BEN-VENISTE. You weren't conducting some kind of an investigation to see whether there was some impropriety going on with some matter in the White House?

Mr. MARGOLIS. That's absolutely correct.

Mr. BEN-VENISTE. You weren't looking for financial records of the President?

Mr. MARGOLIS. Absolutely not.

Mr. BEN-VENISTE. You weren't looking for real estate investments?

Mr. MARGOLIS. Absolutely not.

Mr. BEN-VENISTE. You weren't looking for the vetting files for the Attorney General or the various Supreme Court nominees?

Mr. MARGOLIS. Absolutely not.

Mr. BEN-VENISTE. The reason why Mr. Heymann made the suggestion and the reason that you thought it was a good idea was to provide defense against criticism that the White House might be

holding this too closely if it was only the White House that reviewed the records?

Mr. MARGOLIS. That was a large part of our thinking. The other part of our thinking was with all due modesty, I think that I would do a better job at that than Bernie Nussbaum.

Mr. BEN-VENISTE. Well, he would say it would be hard to argue on the basis of this, but I will get into that in a moment.

Mr. MARGOLIS. But those were the two reasons.

Mr. BEN-VENISTE. Now, at some point you think you remember on the evening of the 21st saying to Mr. Nussbaum, "If this were IBM, I would get a subpoena duces tecum returnable forthwith?"

Mr. MARGOLIS. No, I believe I said that the next day.

Mr. BEN-VENISTE. The next day. And that was a joking remark on your part?

Mr. MARGOLIS. No, that was not so much joking. This was when we were debating the wisdom of changing, what I say was changing, the ground rules and I was trying to make every argument I could. His remark back I believe was joking.

Mr. BEN-VENISTE. Well, let's look at your remark. You were interested in persuading Mr. Nussbaum that Mr. Heymann's suggestion had more merit than Mr. Nussbaum's?

Mr. MARGOLIS. That's true.

Mr. BEN-VENISTE. When you suggested that if this were a corporate case—let's get off IBM because I think we have tarnished that name enough.

Mr. MARGOLIS. Well, except I used that name, I want to make plain, I used it because I wanted to pick a very respected and respectable company.

Mr. BEN-VENISTE. OK. If there were a suicide of an IBM executive who was found dead in a park on Federal land, in Yosemite, let's say, and he was on vacation and his office was in Armonk, New York, are you suggesting that you would get a subpoena duces tecum returnable forthwith, to remove the files from that executive's office?

Mr. MARGOLIS. I am not suggesting that.

Mr. BEN-VENISTE. That was not really a viable suggestion, then?

Mr. MARGOLIS. But when I say I am not suggesting that, part of the reason I am not suggesting it is those facts are very different than the facts in this case.

If an executive, a high executive from IBM were found dead a couple of miles from his office on Federal land and if we were being stonewalled by IBM as to access to the documents in his office, I might very well consider a subpoena duces tecum. Whether I would actually do it or not, that's a different matter.

Mr. BEN-VENISTE. If the executive was general counsel to IBM and his office was filled with IBM files, legal files?

Mr. MARGOLIS. Yes.

Mr. BEN-VENISTE. Do you feel that you would have had any basis for impaneling a grand jury and suggesting that there would be a subpoena duces tecum returnable forthwith to be issued to the company for the files in that office?

Mr. MARGOLIS. Well, first of all, I would hope that in a big city like Washington, DC, that I wouldn't have to empanel a grand jury. As you know, there are many sitting.

Second, being what I consider an honest and decent prosecutor, I would narrowly craft any such subpoena to call for narrow documents dealing with the suicide, recognizing that that would give whoever the subpoena recipient was a great deal of latitude in determining what they were producing.

Mr. BEN-VENISTE. So the recipient of that subpoena, assuming—let's get over the hurdles—that you would actually issue such a subpoena and you had satisfied yourself that a Federal crime might have been committed.

Mr. MARGOLIS. Might have been, because, as you know, the purpose of a grand jury is to determine whether there has been a Federal crime and, if so, who there is probable cause to charge, rather than starting from the premise that there has been a Federal crime.

Mr. BEN-VENISTE. As I well know.

Then the subpoena duces tecum, narrowly crafted, would have been for a suicide note or evidence reflecting mental condition of the individual or any extortion threat?

Mr. MARGOLIS. Correct.

Mr. BEN-VENISTE. Now, when you delivered that subpoena duces tecum by way of a Federal marshal or the FBI to the counsel for IBM or the company, who would it be who would have the responsibility to go through the files to look for the material that you had narrowly addressed in the subpoena?

Mr. MARGOLIS. It would be the person to whom the subpoena were addressed or I could address it to the custodian of the records.

Mr. BEN-VENISTE. In your experience, typically counsel for the company—

Mr. MARGOLIS. Would be consulted by the recipient of the subpoena, certainly.

Mr. BEN-VENISTE. And would go through the records?

Mr. MARGOLIS. Yes.

Mr. BEN-VENISTE. So that at the end of the day, if you had gotten such a subpoena and it would have been for Mr. Foster's office, directed to the White House or to the custodian of the records, then it would be up to Mr. Nussbaum to go through the records and look for a suicide note or an extortion note or related type of information and then, in due course, provide that to the grand jury?

Mr. MARGOLIS. That's correct.

Mr. BEN-VENISTE. Or to you as a representative of the grand jury?

Mr. MARGOLIS. Or to go before the court and explain why he couldn't or didn't want to. If I had issued such a subpoena.

Mr. BEN-VENISTE. In the case in point, sitting in Mr. Nussbaum's office, was, in your view, preferable to not sitting there while he went through the records?

Mr. MARGOLIS. That's correct. Sitting in his office was preferable to issuing the subpoena we were talking about.

Mr. BEN-VENISTE. It is obvious that during the procedure that Mr. Nussbaum employed, you were involved in an interactive process. At some point, you said, "Bernie, look over here. Bernie, look at this. Well, what is that?" And from time to time he would show a document or give you a further explanation. Correct?

Mr. MARGOLIS. Yes.

Mr. BEN-VENISTE. So that in a sense, rather than the pile that he segregated that you had identified as material that you were interested in, consisting of a suicide note which was not found, nonexistent, or related material showing mental condition, which may be the scraps of paper, if that had been found, or an extortion threat, which was nonexistent, you had basically been left with the scraps of paper.

Mr. MARGOLIS. The scraps of paper in the bottom of the briefcase.

Mr. BEN-VENISTE. Right. And that would be all you would get in response to the subpoena, presumably. Correct? But, indeed, with respect to the interactive process that was employed, you identified appointment calendars, message slips, other material as Mr. Nussbaum went through the office. Correct?

Mr. MARGOLIS. He identified them.

Mr. BEN-VENISTE. Yes, but you then expressed an interest or some Park policeman or FBI agent expressed an interest, and while that might be interesting to us, let's put that aside. Correct?

Mr. MARGOLIS. On rare occasions, mostly what Bernie would say is, "This is something," like for instance, there was a newspaper article, "This is something that would indicate, if I showed it to you, while it's only a newspaper article, it would indicate how the President was thinking on a certain matter, and I can't show that to you." He would make the judgment and tell us what the judgment was.

Mr. BEN-VENISTE. But in terms of the materials that were segregated—

The CHAIRMAN. Can I interrupt just for a moment, and because of the interruption, I will make sure that whatever time is taken is put back?

You are saying that as it related to—you have a recall that there was an incident where a newspaper clipping was taken and Mr. Nussbaum said, "Well, this indicates what the President was thinking about?"

Mr. MARGOLIS. Yes; on a particular issue.

The CHAIRMAN. "But I won't show it to you?"

Mr. MARGOLIS. Yes, because it would be an invasion of the President's deliberative process.

The CHAIRMAN. Thank you.

Senator SARBANES. Mr. Margolis, in the course of this process, is it not the case that the investigators identified on the basis of the—the investigators, upon the identification by Mr. Nussbaum of certain material, indicated an interest in that material and it was placed into the pile?

Mr. MARGOLIS. That's true, Senator. When, on certain items that Mr. Nussbaum said, "This is not a problem in terms of privilege or executive privilege or privileged communications," that they would say on some of those, "Yes, we would like to see that." For instance, I believe there was a calendar.

Senator SARBANES. All right. And those items went beyond a suicide note, a writing about the state of mental condition, or an extortion threat.

Mr. MARGOLIS. But we didn't know until we looked at them. For instance, on—

Senator SARBANES. I understand that. But your subpoena, if you had issued a subpoena, would have been for those items, as I understand your testimony now. So, by having this interactive process, as much as you objected to it, you and the investigators got additional material beyond what would have been covered in a narrow subpoena. Is that not the case?

Mr. MARGOLIS. I suppose you could say they got additional material that was non—well, it turned out to be nonrelevant, yes, Senator. But what they didn't get—and keep in mind, I never, just so there is no mistake, I never suggested that I was going to issue a subpoena to anybody in the White House for any records. I never suggested that to anyone. Remember what I said was, "If this were IBM, this is the way I would handle it."

Was there a little bluff in that? Yes, there was a little bluff in that. But I never mentioned that I would do it. I mean, it's like we lawyers say, "If it were not assise time, I would run you through." The point was, I said, "If this were IBM." It wasn't IBM. It was the White House Counsel, and I understand the difference.

Mr. BEN-VENISTE. We have covered the fact——

The CHAIRMAN. You were about to say, "But I didn't get." What were you going to say before you went off to explain that you weren't going to issue a subpoena?

Mr. MARGOLIS. Can you give me a hint?

The CHAIRMAN. I don't know. You said—the question was——

Senator SARBANES. What you didn't get was the opportunity to look at the stuff yourself.

Mr. MARGOLIS. I think I was about to mention that I have a vague recollection that there was a map that Bernie had and I was interested there, you know, if it had Fort Marcy Park indicated in any way, I would be interested in that.

Mr. BEN-VENISTE. He put the map in the pile?

Mr. MARGOLIS. Yes.

Mr. BEN-VENISTE. Eventually the police looked at the map?

Mr. MARGOLIS. Yes. We might have looked at it right then, as a matter of fact.

Mr. BEN-VENISTE. So, there was stuff that was of immediate interest to you. Was there anything of immediate interest that you really wanted to look at that he said "no"?

Mr. MARGOLIS. No, and the reason for that is that I didn't know what was in there.

Mr. BEN-VENISTE. OK.

Mr. MARGOLIS. It wasn't possible, and I think I complained about that during the search.

Mr. BEN-VENISTE. In the process, though, it was something of an interactive procedure. We got to the question of bluff. There was a second bluff, and I am not suggesting that when I was a prosecutor, it was beyond me to perhaps make a statement that I might not have intended to fully execute on.

Senator SARBANES. I wouldn't think that of either Mr. Ben-Veniste or Mr. Chertoff.

Mr. BEN-VENISTE. Thank you, Senator.

But there was a second part of the bluff, and that was that you might leave. Mr. Nussbaum was concerned about you staying, and you said, "Well, you know, maybe we'll go get a bite. Maybe we'll

catch a movie. You let us know. Give us a buzz. We'll be back in 50 minutes if you need us."

Mr. MARGOLIS. That was not a bluff.

Mr. BEN-VENISTE. I mean, the idea of leaving.

Mr. MARGOLIS. No, that was——

Mr. BEN-VENISTE. And not coming back for the procedure.

Mr. MARGOLIS. That is different. Now, that's different.

Mr. BEN-VENISTE. That's what I meant.

Mr. MARGOLIS. I did seriously, and almost did, go back with the intention of coming back.

Mr. BEN-VENISTE. Right. But the notion of leaving and saying, "Well, look, just mail us the results." That was a bluff?

Mr. MARGOLIS. That was an argument. I mean, I wanted to hear what his response would be. Why wasn't that satisfactory? I knew why it wasn't satisfactory to me.

Mr. BEN-VENISTE. But it was clear to you at the time that whatever the procedure was, you thought it would be better to stay than to go?

Mr. MARGOLIS. That's correct.

Mr. BEN-VENISTE. It was your understanding that Mr. Heymann agreed with that?

Mr. MARGOLIS. That's correct.

Mr. BEN-VENISTE. You know now, do you not, that Mr. Heymann had a different view? He had a misunderstanding with you?

Mr. MARGOLIS. Or not a meeting of the minds. That's correct.

Mr. BEN-VENISTE. Not a meeting of the minds.

Mr. MARGOLIS. Although I am still not sure of that.

Mr. BEN-VENISTE. He so testified.

Mr. MARGOLIS. What did he testify?

Mr. BEN-VENISTE. He testified that it was clear in his mind that he had not authorized you at that point to stay until he had the opportunity to reassess the situation or see what Mr. Nussbaum's final position would be and then make a determination of whether the Department of Justice lawyers would stay.

In fact, that evening, he was upset because he felt that the Department of Justice lawyers stayed there without his authorization and that he should have had the option to call them back, and in fact that seemed to be the central point of his being upset with Mr. Nussbaum, according to his testimony.

Mr. MARGOLIS. Thank you. Well, I didn't hear his testimony. But my understanding, for what it's worth, was that from the time it happened he was upset because he thought he had an agreement with Mr. Nussbaum that if Bernie did not change his mind and go back and agree to the original procedure, that Bernie would call him and that they could discuss it further and Phil could make his determination.

Mr. BEN-VENISTE. Right, and that was a part of it. But you had a different recollection than Mr. Heymann did about whether you and he agreed that under any circumstances you would be staying? He thought that that had not been agreed to?

Mr. MARGOLIS. I can only tell you what my understanding was.

Mr. BEN-VENISTE. Of course, it is reasonable and possible that people under such circumstances could have a different interpretation of what was said and what was agreed to?

Mr. MARGOLIS. If he said differently than my understanding, then certainly he is a reasonable person.

Mr. BEN-VENISTE. Incidentally, on the issue of this newspaper article, it was the recollection of Captain Hume and others that you got into this discussion about whether the newspaper article could be avowedly the subject of privilege and that you agreed ultimately with Bernie because this is something you were familiar with and did at the Justice Department. Do you recall that?

Mr. MARGOLIS. No, no, but I do recall saying it reminded me, it gave me a bit of *deja vu* all over again of dealing with the CIA, is what I said, not the Justice Department.

I want that distinction to be very clear.

Mr. BEN-VENISTE. In any event, this got pretty rarified, and the law enforcement people there, I take it, hearing the lawyers discuss these kinds of issues, began to roll their eyes at some point?

Mr. MARGOLIS. They were sitting behind me.

Mr. BEN-VENISTE. Well, that's a good point.

Let's put up on the screen, if we will, the exhibit that reflects the layout of the office.

Are you comfortable?

Mr. MARGOLIS. Yes. I am getting a bit uncomfortable, but not for—I may have to make a phone call, as they say.

Mr. BEN-VENISTE. Let's take a break now, if we may, Mr. Chairman.

The CHAIRMAN. Why don't you make that phone call then?

Mr. MARGOLIS. Five minutes?

The CHAIRMAN. Sure. Absolutely.

[Recess.]

Mr. BEN-VENISTE. Mr. Margolis, I am showing you Exhibit 1 from, I think, August 7. Does that look familiar to you? That has been represented as more or less a scale version of Mr. Foster's office, as it existed on or about July 20.

Mr. MARGOLIS. I could not quarrel with its accuracy.

Mr. BEN-VENISTE. Can you tell us—if we can summon the dotmeister—where you were sitting that day in the office?

Mr. MARGOLIS. I was sitting in a chair, and in the first chairs, the first row of chairs. So, if that's accurate as to where the chairs were—

Mr. BEN-VENISTE. If it's not, you tell us.

Mr. MARGOLIS. I thought I was sitting more toward the center of the room. Do you see where the dot is now?

Mr. BEN-VENISTE. OK.

Mr. MARGOLIS. A little bit, a couple of inches further back. That's my recollection of where I was sitting.

Mr. BEN-VENISTE. That's where you recall sitting.

Now let's move Mr. Margolis'—is that where the dot has landed?

Mr. MARGOLIS. Yes.

Mr. BEN-VENISTE. Let's put that X and move Mr. Margolis' chair over there. Do you remember where Mr. Adams was sitting?

Mr. MARGOLIS. My best recollection would be that he was sitting in roughly the same distance from the desk but off to the side from me, off to the upper side.

Mr. BEN-VENISTE. To the side closest to the door, where the dot is now?

Mr. MARGOLIS. No, the other side.

Mr. BEN-VENISTE. The other side?

Mr. MARGOLIS. Yes, right about there.

Mr. BEN-VENISTE. OK.

Mr. MARGOLIS. No, further up. Further up. Yes, about there.

Mr. BEN-VENISTE. There.

The CHAIRMAN. He is having a little trouble.

Mr. MARGOLIS. It won't stop on me.

Mr. BEN-VENISTE. Now, do you remember where the law enforcement people were sitting?

Mr. MARGOLIS. My recollection is they were behind us.

Mr. BEN-VENISTE. Well, there's a coffee table right behind you there.

Mr. MARGOLIS. Right, and then there's a sofa.

Mr. BEN-VENISTE. There were two on the sofa, as we have heard the testimony. Sergeant Markland to the left, and I believe Scott Salter was sitting next to him. Is that your recollection of where Mr. Salter was sitting?

Mr. MARGOLIS. As I say, because they were behind me, I didn't pay that much attention.

Mr. BEN-VENISTE. OK.

Mr. MARGOLIS. Or any attention, really, to the location. I would have guessed that Mr. Salter was sitting in front of the sofa and behind me. That would have been my guess, but I'm not sure.

Mr. BEN-VENISTE. In front of the sofa and behind you?

Mr. MARGOLIS. Yes, somewhere in between.

Mr. BEN-VENISTE. Somewhere in between. Well, there's a coffee table in between, at the moment.

Mr. MARGOLIS. Yes, but there is also a little room.

Mr. BEN-VENISTE. So you think he was sitting in a chair just behind you?

Mr. MARGOLIS. Behind me, a couple of feet behind me.

Mr. BEN-VENISTE. On the other side of the coffee table?

Mr. MARGOLIS. I couldn't be sure of that.

Mr. BEN-VENISTE. That he was then sitting in front of Detective Markland?

Mr. MARGOLIS. If Detective Markland were sitting against the back wall.

Mr. BEN-VENISTE. Let's put an X there for Agent Salter.

Now, you have no recollection of Mr. Nussbaum lifting the briefcase; he might have done that or he might have looked at it while it was on the floor?

Mr. MARGOLIS. He might have looked at it on the floor or he might have put it on the desk.

Mr. BEN-VENISTE. The testimony seems to be uniformly that he reached down behind him, removed the files from the briefcase, which was——

Mr. MARGOLIS. On the floor.

Mr. BEN-VENISTE. —on the floor, and put the files up.

We have also learned that this briefcase snaps shut when it's empty. I take it you could not see into the briefcase?

Mr. MARGOLIS. I could not see into the briefcase.

Mr. BEN-VENISTE. If Detective Markland could see into the briefcase, he would have to see through Special Agent Salter, you, and the desk in order to see through there?

Mr. MARGOLIS. I don't see how he could have seen into the briefcase in those circumstances.

Mr. BEN-VENISTE. Neither do I.

Now, it was your understanding, Mr. Margolis, that there were personal financial materials of the President that were in the office, in Mr. Foster's office, and investment materials. Correct?

Mr. MARGOLIS. I was told that there were—I don't believe—maybe it was investment, but I was told by Mr. Nussbaum that there were personal financial papers.

Mr. BEN-VENISTE. OK. You have testified you had no interest in those, and Mr. Adams has testified tonight, and Mr. Heymann has testified that they were not surprised that such materials were in Mr. Foster's office. Were you surprised?

Mr. MARGOLIS. Which materials of whom now?

Mr. BEN-VENISTE. Personal financial materials of the Clintons.

Mr. MARGOLIS. I will tell you, at the time that I was told that, a shot—or a thought shot through my mind as to the difference between personal papers that White House Counsel work on versus official papers, and I just said to myself, that's not my issue and that's not my concern.

Mr. BEN-VENISTE. It was your understanding——

Mr. MARGOLIS. You asked me if I was surprised. I had never been in that situation before.

Mr. BEN-VENISTE. So I take it you were not surprised?

Mr. MARGOLIS. It did catch my attention, but I had, you know, it was not of great interest to me.

Mr. BEN-VENISTE. More importantly, it was your understanding that those materials were to be dispersed to the private attorney of the Clintons designated.

Mr. MARGOLIS. That's right.

Mr. BEN-VENISTE. I'm sorry?

Mr. MARGOLIS. That's right.

Mr. BEN-VENISTE. As were the private Foster materials going to the Foster private attorney?

Mr. MARGOLIS. That's correct.

Mr. BEN-VENISTE. I see my time has expired, Mr. Chairman, and I will try to pick this up in a few moments.

The CHAIRMAN. Thank you, Mr. Ben-Veniste.

Senator Shelby.

Senator SHELBY. Thank you.

Mr. Margolis, without trying to eat up a lot of time, yours and the Committee's both, I just want to recap a little of your background. You have been some 30 years with the Justice Department, starting out in the U.S. Attorney's office more or less?

Mr. MARGOLIS. Yes, Senator.

Senator SHELBY. What is your current position in the Justice Department?

Mr. MARGOLIS. Associate Deputy Attorney General.

Senator SHELBY. Had you worked in criminal divisions of the Justice Department off and on for a number of years?

Mr. MARGOLIS. Criminal has been really my only expertise for all 30 years.

Senator SHELBY. You have been involved as working with and then the head of several Justice Department strike forces, have you not?

Mr. MARGOLIS. Correct. As well as being in charge of the whole organized crime section and all its strike forces.

Senator SHELBY. Now, basically, you have spent most of your life working with the Justice Department, have you not?

Mr. MARGOLIS. That's correct.

Senator SHELBY. Your professional life, I would say.

Mr. MARGOLIS. Actually, my whole life.

Senator SHELBY. Your whole life.

Mr. MARGOLIS. Most of my whole life.

Senator SHELBY. You know Mr. Heymann, you have worked with him on several occasions at the Justice Department. Were you working at the Justice Department back in the Carter Administration when Mr. Heymann was in charge of the criminal division?

Mr. MARGOLIS. Yes, I was.

Senator SHELBY. Were you working under him, so to speak?

Mr. MARGOLIS. Well, he appointed me.

Senator SHELBY. He appointed you?

Mr. MARGOLIS. As Chief of Organized Crime, yes.

Senator SHELBY. So you were Chief of Organized Crime under Mr. Heymann at the Justice Department?

Mr. MARGOLIS. And under his Republican successors until 1990.

Senator SHELBY. Who were the Republican successors?

Mr. MARGOLIS. First it was Lowell Jensen.

Senator SHELBY. OK.

Mr. MARGOLIS. Then it was Steve Trott.

Senator SHELBY. OK.

Mr. MARGOLIS. Then it was Bill Weld, Governor Weld.

Senator SHELBY. Governor Weld.

Mr. MARGOLIS. I still call him Bill.

Then it was Ed Dennis. Then it was Bob Mueller, and Mueller was the last Republican appointee.

Senator SHELBY. Would you describe yourself as nonpartisan in your job?

Mr. MARGOLIS. Yes, I do, and I would hope my bosses would do the same.

Senator SHELBY. You have known Mr. Heymann for how many years now?

Mr. MARGOLIS. Since 1978. So, 1978—17 years.

Senator SHELBY. Do you hold him in high regard?

Mr. MARGOLIS. Absolutely.

Senator SHELBY. All right.

Mr. MARGOLIS. I have said this publicly and semipublicly before—he is one of my heroes, and he is a very dear friend.

Senator SHELBY. Would you say without question that he has high integrity and that is generally accepted everywhere?

Mr. MARGOLIS. I have never heard it disputed, and I agree 100 percent.

Senator SHELBY. If he testified, which he did, according to the record right here, that after you came back from the White House,

you and Mr. Adams went to the Justice Department on the occasion, was it the 21st or 22nd, whatever date, and you told him what had gone on at the White House, that the agreement was not going to be adhered to, at least your perception.

Mr. MARGOLIS. Right.

Senator SHELBY. If he told you that he went home to an apartment where he was renting and staying here in the Washington area, and then he picked up the phone and he called Mr. Nussbaum and told him—and I am quoting Mr. Heymann—

Mr. MARGOLIS. Yes.

Senator SHELBY. —that, “I couldn’t imagine why he would have treated me that way, how could he have told me he was going to call back before he made any decision on how the search would be done and then not call back?” If he testified to that, would you believe him without question?

Mr. MARGOLIS. Absolutely. I should add, he told me that at the time.

Senator SHELBY. He did?

Mr. MARGOLIS. Back at the time, that he was going to make that call and that he did make that call.

Senator SHELBY. You believe he did, too, don’t you?

Mr. MARGOLIS. Absolutely.

Senator SHELBY. And if he told Mr. Nussbaum—

The CHAIRMAN. Let me ask you this, if I might, Senator, did he tell you afterward, sometime afterward, that he had indeed made that call?

Mr. MARGOLIS. Yes, he told me the next day.

The CHAIRMAN. Could you recall what he told you?

Mr. MARGOLIS. What he told me?

The CHAIRMAN. Yes.

Mr. MARGOLIS. Well, first he told me, you know—I had come back, told him what happened. I told him that I was perplexed, I didn’t know if anything was being hidden from us. So that when he called Mr. Nussbaum and asked him if he was hiding anything, I must accept the responsibility for perhaps planting that in his mind. But he was angry on his own, and he said, “You know, Bernie was supposed to call me back and he didn’t, and I am going to talk to him.”

Then the next day he said that he had called Bernie. I remember him mentioning that he called him from his kitchen in his apartment, and I quote, I think he said, “I gave him a piece of my mind.” I don’t think he said much more than that.

Senator SHELBY. After you went to the White House and came back after the meeting, did it occur to you perhaps that maybe Mr. Nussbaum was hiding something, he was trying to thwart the investigation?

Mr. MARGOLIS. I tell you, Senator, I was perplexed as I am today.

Senator SHELBY. Sure.

Mr. MARGOLIS. As to what happened. I thought I had this figured out, that the torn-up scraps of paper were not in the briefcase the day that Mr. Nussbaum did the search in our presence. That was the explanation I came up with, and that somebody—that it had never been there before and somebody put it in afterward or it had been there, somebody took it out and then decided they better put

it back because there was public speculation of where is the suicide note.

So, in my own mind, I speculated that must be what happened. But then, when I picked up the paper one day and saw that Mr. Spafford said the note had been in there when the search was conducted, I am at a loss now. I just have no explanation. I don't know.

Senator SHELBY. Based on your 30 years as a lawyer in the Justice Department, involved in the criminal division, that made you ponder, did it not?

Mr. MARGOLIS. And to this minute.

Senator SHELBY. To this minute.

Mr. MARGOLIS. That's correct.

Senator SHELBY. Do you recall if anyone was in the office when Mr. Neuwirth claimed he found the pieces of note in the briefcase?

Mr. MARGOLIS. Whether anyone else was in the office?

Senator SHELBY. Yes, other than Mr. Neuwirth.

Mr. MARGOLIS. I don't recall.

Senator SHELBY. You don't recall.

Mr. MARGOLIS. I don't recall, Senator.

Senator SHELBY. Now, if he were the only one in the office there when this was supposedly discovered, and he had been in and out of that office that day, would that fuel your imagination a little bit?

Mr. MARGOLIS. I think my imagination is fueled so much now it would be an afterburn with anything else.

Senator SHELBY. Thank you.

Mr. Margolis, if Mr. Heymann said that he told Bernie in this phone call I was referring to from the apartment that you related a minute ago, "Are you hiding something," and he said, "No, I promise you we're not hiding something," and if Mr. Heymann then said to Mr. Nussbaum, "You misused us," or something to that effect, would you believe that?

Mr. MARGOLIS. Oh, absolutely.

Senator SHELBY. All right.

Mr. MARGOLIS. Because one thing that happened, Senator, was either later that day of the search or the next day, a statement or information came from the White House to the media along the lines that I had feared. It was that the search was conducted under the supervision of the Department of Justice. I worried about something like that, and I remember with Mr. Heymann's permission, telling our press office to correct that, that the search was conducted in the presence of the Justice Department.

So I think Phil was troubled by that, and I think that's part of what he was talking about, that the impression was created that the Department of Justice did play a far larger role in the search than in fact it did.

Senator SHELBY. Mr. Margolis, do you believe that the Justice Department was used on this occasion by the White House Counsel to dress up what he would term as a search of the Foster files?

Mr. MARGOLIS. Yes.

Senator SHELBY. Thank you.

Was the meetings at the White House that you and Mr. Adams went to, were they tense in nature?

Mr. MARGOLIS. Not the first one.

Senator SHELBY. OK.

Mr. MARGOLIS. Not that first evening. I did not find that tense.

Senator SHELBY. Was the second one tense?

Mr. MARGOLIS. Yes.

Senator SHELBY. Who was in control of the search at the White House office there? Was that Mr. Nussbaum?

Mr. MARGOLIS. Yes.

Senator SHELBY. Was the Justice Department, the FBI, the Park investigators in any way in control of the search in the office?

Mr. MARGOLIS. No.

Senator SHELBY. Do you believe, Mr. Margolis, that the conduct of the White House Counsel in setting the ground rules of the so-called search later dispersing papers and so forth, without the Justice Department having an opportunity to evaluate them, compromised or contaminated the investigation?

Mr. MARGOLIS. I can't say that, Senator. What I would say—

Senator SHELBY. What would you say?

Mr. MARGOLIS. I would say, and I think Mr. Heymann said it perfectly—that the way this was done—and I don't think I can capture his exact words—but the way this was done, it managed to cast substantial doubt on the bona fides of the investigation with no evidence that anything wrong was ever done. It was the worst of all worlds.

Senator SHELBY. But with the papers gone and the Justice Department never being really able to conduct an ordinary investigation, we will never know what was there, will we?

Mr. MARGOLIS. We will never know, but I have to tell you, Senator, what I am focusing on, and all I am focusing on, is that note.

Senator SHELBY. Sure.

Mr. MARGOLIS. If you had showed me a bunch of financial documents—not if you had showed me—if Mr. Nussbaum had showed me a bunch of financial documents that day, I wouldn't have been very interested in them, I wouldn't have understood them, I don't think my agents would have had any interest in them. But what happened was, the confusion or the problem that was created is that there's a perception out there that we have never gotten away from that there was something hidden.

Senator SHELBY. Mr. Margolis, you had a high security clearance, did you not?

Mr. MARGOLIS. Top secret.

Senator SHELBY. Top secret.

Mr. MARGOLIS. Code word.

Senator SHELBY. Did Mr. Adams have that, too?

Mr. MARGOLIS. I believe he had at least top secret.

Senator SHELBY. But you had top secret?

Mr. MARGOLIS. Yes, a little bit above that.

Senator SHELBY. You worked at the Justice Department, which is part of the Executive Branch of Government, isn't it?

Mr. MARGOLIS. That's correct.

Senator SHELBY. If there was litigation or stuff like that requiring difficult things at the White House, does the Justice Department get involved rather than the White House Counsel on behalf of the—

Mr. MARGOLIS. Litigation, yes. Yes, sir.

Senator SHELBY. You mentioned a minute ago, I believe it was your words that you felt like you had lost—you used a metaphor, yours, I suppose—we had lost the battle, lost the war.

Mr. MARGOLIS. I should have said we lost the war, yes.

Senator SHELBY. Lost the war. Thank you.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Margolis, I just want to be clear on that E-mail that we discussed before.

Mr. MARGOLIS. Yes.

Senator SARBANES. Which, as I take it, the way you prepared it, had a heading on it?

Mr. MARGOLIS. My recollection is yes. I have it here. Let me take a look at it. I should have it here. I think I can lay my hands on it. I have it. Yes, that heading is, "Subject: Vince Foster. Moot court. Media questions." That's my heading. Those are my words.

Senator SARBANES. Well, I would just make the observation, apparently this got leaked without the heading.

Mr. MARGOLIS. Yes.

Senator SARBANES. And, therefore, was treated in the press without—

Mr. MARGOLIS. To my great consternation, as I lay home in bed and got a call from a friend of mine who read it to me early that Friday morning, and read it to me and said it was in the top part of the New York Times that day.

I was, to put it mildly, outraged and very upset and I wound up asking Carl Stern, the Department's press spokesman, to make sure the press got the real story. I am still outraged by that. It caused me a great deal of consternation. I don't know who did it. I would love to know. But I can't believe it was done innocently.

Senator SARBANES. All right.

Mr. MARGOLIS. Because not only was the caption left off, but the whole spin on the story was that this was my feelings about what happened, and therefore leaving the caption off, which would have cut away from that, had to be purposeful, and then to have in the story a statement that, "Well, some Democrat Senator explained it by claiming that it was just moot court questions."

So, having the true story, but then giving it the back of the hand troubled me a great deal. And at my insistence, Carl was able to get a correction printed in the Times the next day. But I recognize that corrections, especially on a Saturday morning, in a corrections box of a story that appeared at the top of the front page of the paper, the correction maybe isn't worth much more than the paper it's written in.

Senator SARBANES. Yes. Thank you. I just wanted to clarify that. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator.

Mr. Margolis, let me go to your speculation about the note because I think that is pretty interesting, and it is, among all the things we have discussed here, the one item that was clearly within the purview of what the police were looking for; that is, while not a suicide note, some indication of the mental distress that Mr. Foster clearly labored under in the days or weeks prior to his death.

So at first you were highly suspicious when the note was discovered, that maybe it wasn't in the briefcase and it had been put there subsequent to the 22nd?

Mr. MARGOLIS. At first, I was just very upset and suspicious in general. But I didn't come up with that speculation until later on.

Mr. BEN-VENISTE. But when the note was discovered and the public announcement was made that there was a note there after all, it caused criticism to be levied against the Park Police, and they were very sensitive to that.

Mr. MARGOLIS. Yes.

Mr. BEN-VENISTE. The fact that the note wasn't uncovered really led to a lot of problems that might not have surfaced at that point?

Mr. MARGOLIS. I think there was criticism of the Department of Justice also.

Mr. BEN-VENISTE. Right.

Mr. MARGOLIS. And the White House. Everybody was criticized.

Mr. BEN-VENISTE. Everybody got smeared with that because you were in the room, and you didn't like that, because it wasn't your way of doing it in the first place.

Mr. MARGOLIS. That's right, but I also thought I had to admit to myself that the criticism of me I couldn't quarrel with. I made a judgment call to go along with it, so I had to accept the criticism.

Mr. BEN-VENISTE. You have been, as I understand it, following very intermittently these proceedings. Let me tell you what we have learned and see what your reaction is to that.

We have learned that three people observed that there were scraps of paper in the bottom of that briefcase as of the 22nd. The first was Bill Burton, who was standing behind Bernie Nussbaum during the search, and he has testified that he saw yellow Post-its or something in the bottom of the briefcase, glimpsed for a second or two.

Mr. MARGOLIS. During the course of the search.

Mr. BEN-VENISTE. During the course of the search, that he saw something yellow in the bottom of the briefcase.

Ms. Gorham, who was Mr. Foster's secretary, has testified that she and Ms. Tripp, who was also a secretary or administrator in the office, were vitally interested in trying to learn any information about what might have caused Mr. Foster's death. On the 22nd, after you had left the office, Ms. Gorham came in, and Ms. Gorham was in for a while helping Mr. Nussbaum, and then left.

Then Ms. Tripp said to her, "Have they found the note?" Ms. Gorham says, "no." Ms. Tripp says, "Did they look in the briefcase?" Ms. Gorham said, "Yes, they looked in the briefcase. The briefcase is empty except for some yellow scraps of paper."

Mr. Spafford's testimony, although not the recollection of Messrs. Sloan and Nussbaum, is that at the conclusion of the search he overheard a conversation, "Hey, there's yellow scraps of paper in the bottom of the briefcase," and Bernie said, "We'll get to that later," sitting on the couch exhausted. Spafford didn't include it in his notes, didn't ask to see the yellow scraps of paper. It was Mr. Foster's briefcase, one of his personal effects.

So I put it to you that perhaps this was something that was hidden in plain sight. Everyone was looking for a note; what they

weren't looking for was torn-up scraps of paper in the bottom of the briefcase. Does that compute?

Mr. MARGOLIS. I don't know. I mean, what computes with me is that if I had been looking at that briefcase and it was hidden in plain sight for me, I would go up to the Attorney General and ask her to fire me, and I would be humiliated. Now, these guys aren't supposed to be as good at what I do as I am.

Mr. BEN-VENISTE. Right.

Mr. MARGOLIS. But that's what I feel for myself.

Mr. BEN-VENISTE. All right. But in terms of people of good faith certainly—you can say what you will of the secretaries—were clearly not interested in covering anything up, clearly interested in finding out what happened to Mr. Foster, clearly interested in finding a note, they said, "Well, there's no note, just some yellow scraps of paper in the bottom of the briefcase."

Mr. MARGOLIS. Does that boggle my mind? Yes, especially since Mr. Neuwirth a couple of days later had the presence of mind to put it together.

Mr. BEN-VENISTE. Well, they fell out, and he saw writing on them. He looks in and sees the rest. That's his testimony. I am not testifying.

Mr. MARGOLIS. I see.

Mr. BEN-VENISTE. Let's go to the newspaper story that so bothered you and Mr. Heymann.

Mr. MARGOLIS. I didn't know it bothered him. It bothered me.

Mr. BEN-VENISTE. You discussed it with him, did you not?

Mr. MARGOLIS. Yes, and I asked him to clarify it. But he seemed to—you know, his ox was not gored by it. My ox was gored.

Mr. BEN-VENISTE. The evening of the 22nd a statement was made by the White House, and then I guess things went out on the wire. Do you remember where you learned about the spin either that evening or the next day?

Mr. MARGOLIS. I'm sorry, by the way, I thought when you said the article that disturbed me, I thought you meant the recent New York Times article. Now you're referring to the——

Mr. BEN-VENISTE. Yes, I am back on the 22nd.

Mr. MARGOLIS. OK. The question there was when it came out?

Mr. BEN-VENISTE. Yes, when you learned that the media was carrying the story that the Department of Justice had supervised the search?

Mr. MARGOLIS. I thought it was the next day or within a day or two.

Mr. BEN-VENISTE. Would it surprise you to learn that the evidence so far developed here has been that the statement released by the White House was that Bernie Nussbaum conducted the search in the presence of the Department of Justice and other law enforcement and that the newspaper story that came out made the jump suggesting that the White House supervised?

Mr. MARGOLIS. Yes, I mean, all I know is what appeared.

Mr. BEN-VENISTE. What appeared disturbed you?

Mr. MARGOLIS. Yes, and that's why it was clarified. Now, you're telling me our clarification went along with what the White House originally said.

Mr. BEN-VENISTE. Finally, with respect to Mr. Heymann being angry. He was angry on the evening of the 22nd because, among other things, he felt he should have had the opportunity to make the decision to pull you and Mr. Adams out as your supervisors.

Mr. MARGOLIS. I don't recall. I know that you have told me now that that's what he has testified to.

Mr. BEN-VENISTE. That's what he has testified to.

Mr. MARGOLIS. I don't recall that being what he told me was his anger at the time.

Mr. BEN-VENISTE. When you came back from the White House on the 22nd and you explained what happened to him, did he ask you how come you stayed?

Mr. MARGOLIS. No. No. He did tell me that Bernie was supposed to call him, and he was angry with that. But he did not say, "And that would have given me the opportunity to pull you guys out."

Mr. BEN-VENISTE. So, at the time, as far as you remember, pulling you out of the office was not of concern to Mr. Heymann and, to the extent that he remembers it differently now, that's just a difference in your recollection?

Mr. MARGOLIS. That's a difference in recollections.

Mr. BEN-VENISTE. But in any event, he was angry because he felt that the Department, according to your recollection, had been misused not because you had any right to be there but because your role was not the principal role but the role that you have explained in a secondary way commenting on what was found and requesting such information as you desired. Correct?

Mr. MARGOLIS. Yes.

The CHAIRMAN. Let me, before I turn this over to Mr. Chertoff with some questions, Mr. Ben-Veniste mentioned good faith.

Can you put on the green, please?

I have to tell you I have trouble—and you raised this; I have never mentioned this publicly before—understanding this whole bit about the note and how it could be in this bag. It's not a briefcase with all kinds of compartments, it's basically a brief bag with one separator. You know, the little pockets, there's nothing that can get stuck in crevices or cracks, any of these pieces. I don't know if you have had the chance to examine it.

Mr. MARGOLIS. I have since then.

The CHAIRMAN. So, would you agree with me? If you look in this bag and if there's 28 scraps of paper, you're going to see them.

Mr. MARGOLIS. Correct.

The CHAIRMAN. It's impossible not to see them. It's just, you have to be a blind man. I think Captain Hume or another Park Police officer said, "You've got to be blind."

Mr. MARGOLIS. Actually, I read the article. I think he said, or one of them said, "Our blindest and oldest and maybe most incompetent investigator would have seen this."

The CHAIRMAN. This is what astonishes me. We have just finished looking for evidence of Mr. Foster's state of mind and why Mr. Foster may have committed suicide. We're looking for this. That's number 1. It's not financial documents, it's not anything else. We're looking for some writing and there in his briefcase are yellow scraps of paper, legal pad. Yellow scraps of paper. What is his stock in trade? He writes on legal pads.

Cliff Sloan is reported to say by an attorney, Mr. Spafford, an attorney representing the Foster family on this occasion, "Bernie, there's scraps of paper in the bag." And he says, "We'll look at that later." Now, why would you say, "We'll look at that later?"

Mr. MARGOLIS. I do not know. I do not have an explanation.

The CHAIRMAN. Would it be possibly, and you have been in the criminal division, and have years of experience, seen all kinds of cases to wait till the room is totally cleared till he leaves because maybe he knows it might be what they're looking for? Is that reasonable?

Mr. MARGOLIS. It's possible. It's possible. I just don't know, Mr. Chairman. As I said, I have been puzzled.

The CHAIRMAN. Otherwise, why wouldn't you look at it?

Mr. MARGOLIS. I would.

The CHAIRMAN. You would have?

Mr. MARGOLIS. I would.

The CHAIRMAN. Would a reasonable person who has just completed conducting this search, would any reasonable person have said, "Let's look at it."?

Mr. MARGOLIS. I would. If we had done this the way I wanted to do it, I wouldn't be sitting here having to answer these questions, because I would have found it, or I would be out on my tail.

The CHAIRMAN. Now, who is to say that there weren't more than 28 scraps of paper?

Mr. MARGOLIS. Well, except the note appears to be self-contained. So if there were 32 scraps of paper——

The CHAIRMAN. No. Supposing there was another page or 2 pages or 3 pages?

Mr. BEN-VENISTE. Or a whole book?

The CHAIRMAN. Well, wait, now, you know something, there is a question that's raised, and I just say, I don't know, but that's certainly something that came to your attention. It didn't come to Mr. Spafford's attention until he read where the note was found. That's why he did not make any note that there's scraps. I mean, do we expect a young attorney who is taking scrupulous notes, to include in his notes that he heard someone say that there were scraps of paper in the bottom of a briefcase. You wouldn't do that. You wouldn't expect it. But thereafter, when he learns where the note was found, he then has a privileged conversation with an attorney about that and he testifies to it.

So, it certainly goes back to something that Mr. Heymann said, that the process was not one that was trustworthy or credible. And I don't know if you know that that's what he testified.

Mr. MARGOLIS. There is no doubt in my mind that that was the major problem. When Mr. Heymann called me that night from the White House Counsel's Office to tell me that he and the Attorney General were there and that a note had been found, I was startled.

The next morning, when he showed me a copy of the note and asked me what I wanted to do, I was so concerned that I remember my exact words, one of the few times that I can remember that, that I said to him, "I want to unleash my 800-pound gorilla to solve this." He knew, because of the way I talk, that I meant I wanted the FBI to investigate how this could happen. I was just very trou-

bled by it. And the FBI was unable to draw a conclusion as to how it happened.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Something that you mentioned, Mr. Margolis, you said you were considering various theories about what might account for these facts involving the note.

Mr. MARGOLIS. Yes.

Mr. CHERTOFF. You said one was that the note had been planted there, and the other was that it had been there and had been taken out at some point.

Mr. MARGOLIS. Yes.

Mr. CHERTOFF. Then someone had made a decision to put it back and have it rediscovered.

Mr. MARGOLIS. Those two were variations on the same theme, those two theories.

Mr. CHERTOFF. Now, at the time that you were considering these theories, had you heard that on the 26th, after the time that Mr. Neuwirth has indicated he found the note and assembled it, that later that day or the next morning Mr. Nussbaum brought in one of the secretaries or Ms. Gorham that Mr. Ben-Veniste asked you about, and actually sat her down and started to question her about what she had seen the previous week in the briefcase, had she seen a whole page or a torn-up page, had she seen more than one page, and that to use her words, he grilled her about that? I take it you didn't know that?

Mr. MARGOLIS. I didn't. I think if I did, I don't think I would have forgotten it. I don't remember.

Mr. CHERTOFF. In fact her testimony here was that she felt as if he was really trying to find out what she had seen, what did she know back a week ago, almost as if he was trying to break her story down.

Now, recognizing, of course, that, Mr. Ben-Veniste started you out, I guess, as an expert witness on this and I am carrying on a little bit with having your opinion, given what appears to be some significant weighty evidence that people's attentions were directed, had to be directed to these pieces of paper on the 22nd, that it was such an obvious thing to want to take a look at as the Chairman said, torn-up, yellow ruled paper, a lawyer's stock in trade, given that fact, given the absolutely mysterious notion that one would not then go and put the paper together on that day, on the 22nd, given the account that we've had about the accidental way in which this was discovered on the 26th, and then given the fact that after this accidental discovery on the 26th, Mr. Nussbaum brings in Deborah Gorham, who was one of the people who had seen the paper the previous week, and starts to try to break her story down, these are facts which it seems to me do suggest or, at least, are consistent with the notion that someone had taken something out on the 22nd, had looked at it and maybe had decided to replace it and have it rediscovered on the 26th, if you don't feel like offering an observation, that's fine, but I wonder if you have an observation about that.

Mr. MARGOLIS. I don't know. I mean, until I learned that a whole bunch of people, including Michael Spafford, say it was in there on

the 22nd, my speculation was that it wasn't there on the 22nd. Now, I am prepared to say that that speculation is suspect.

I guess my answer is that I am glad that is Ken Starr's problem, not mine.

Mr. CHERTOFF. Let me move you forward into the week which you have already started to talk about, which is the week of the 26th. I think you indicated that the 27th was when you learned that this paper had been discovered in the briefcase.

Mr. MARGOLIS. Look, I am not good on dates, but I know when I discovered it because Phil called me from the White House Counsel's Office at night saying it had just been turned over. So it was the same time that he and the Attorney General were there.

Mr. CHERTOFF. As a consequence of that, you said that you suggested to him that he unleash the FBI.

Mr. MARGOLIS. Yes.

Mr. CHERTOFF. Did that happen?

Mr. MARGOLIS. Yes, he authorized me to take care of it.

Mr. CHERTOFF. What did you do?

Mr. MARGOLIS. I got together with the Assistant Director of the Bureau for Criminal Investigations and told them what the issues were, gave them a copy of the note and said, "Find out what happened, and pull out all stops. Pull out all stops."

Mr. CHERTOFF. Did there come a time that a woman named Nancy McFadden had a conversation about this FBI investigation in your presence?

Mr. MARGOLIS. Actually, technically the conversation she had was with Mr. Heymann outside my presence, but then he came with her into my presence but he did the talking, as I recall.

Mr. CHERTOFF. What do you remember?

Mr. MARGOLIS. I remember that this was after the note was discovered and after I had the FBI investigating it, and Phil came in with Nancy and, I think, Cindy Monaco into my office, and I think Rod Rosenstein was present with me in my office.

Phil said that Nancy had reported to him that the FBI was telling people during the course of their interviews that they were investigating an obstruction of justice, which they were, and which they were investigating to determine whether there was an obstruction, which they were doing and which they were doing at my direction.

But the question that she was raising was: Did they have to tell people that that's what they were doing as opposed to just telling them they were conducting an inquiry and then do whatever they did?

He asked me—that was her question—he asked me what the answer was, what we should do. And I told him it was an interesting question and that I would consider it and get back to him.

He pressed me for an answer, and I just said, "I am going to have to think about it and get back to you," because what I thought immediately was that maybe the FBI was saying that, which as truthful as it was, as an investigative technique to shake people up and to let them know how serious it was, and if I said that, you know, that that might be why they were doing it, that would put Nancy in an untenable position of, you know what does she do now? She's got a complaint from the White House, that she go

back, and if she tells them the truth, that "it's just an investigative technique, don't worry about it," then the advantage of the investigative technique is lost.

So, that's why I didn't want to put her in that spot, and that's why I didn't want to discuss it in front of her, and Phil could tell that I was not—he knew me well enough and long enough that I wasn't about to move on that. And so he said, "Well, you know, think about it and then let me know." He obviously didn't know what was troubling me.

I called the Assistant Director of the Bureau after they all left that night and told them what my concern was. He said he didn't think that it was an investigative technique, but he would check and get back to me. He called me back a few minutes later and said, "No, there is no valid reason why the agents are doing it. It just, you know, was rote to them to say it and they're not going to be saying it anymore."

I explained that to Phil, I guess, late that night or the next morning, and I remember him asking me why I seemed so immovable about discussing it, and I think he said angry.

I explained, I said to him, as I often do when I want to take him to the woodshed, that, "Phil, you're one of the brightest guys I have ever met. You don't do things by accident. You don't make mistakes. Why did you put Nancy in that position?" He said, "I'm not as smart as you think I am. It was a mistake. I didn't think of it."

Mr. CHERTOFF. Thank you, Mr. Margolis.

Mr. MARGOLIS. And that was the end of that.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. In essence, if I understand you, Mr. Margolis, the only concern you had about this was whether any premature suggestion that this might be inappropriate would interfere with any technique that the FBI had developed on its own to conduct the investigation as effectively as possible?

Mr. MARGOLIS. That's right. If the FBI were telling people honestly that they were investigating to determine whether there was an obstruction and if they were telling them that in order to convince people this was serious and you better be scared and talk, if people were then told don't worry about it, the advantage would be lost. As it turns out, that was not why they were doing it.

Mr. BEN-VENISTE. This was a jurisdictional hook that was applied bureaucratically to the case that they were investigating and they simply by rote, if I understand you, repeated that when they began their interview of each witness?

Mr. MARGOLIS. This was one of those rare cases where a cigar was just a cigar.

Mr. BEN-VENISTE. And the bottom line, are you comfortable?

Mr. MARGOLIS. No, but I make a living.

Mr. BEN-VENISTE. This is one of those cases where, in fact, the concern was a legitimate one, the FBI didn't need to be doing this, that the 800-pound gorilla was enough without putting the obstruction of justice tag around its neck, and you thought it was appropriate that they stop doing it?

Mr. MARGOLIS. That's right. I should add that the next morning the section chief called me and wanted to know if I was changing

my signals. In other words, was I saying go easy. I had to explain to him that that was not what I was saying.

Mr. BEN-VENISTE. Now, let me ask you about the investigation. For some reason, Michael Spafford was not interviewed by the FBI. Do you now know that?

Mr. MARGOLIS. I do.

Mr. BEN-VENISTE. This was not by design? Or this was inadvertence that he was not interviewed, I take it?

Mr. MARGOLIS. Yeah. You know, I can understand why, because there were so many Federal law enforcement agents, and I did not know. I met with Mike Spafford outside by his car that night after we finished the search, and I don't recall knowing at the time that he had hung around in the White House Counsel's Office because it seems to me I didn't have to wait very long for him. So it couldn't have been a very long session. If I knew and the Bureau knew then that he had hung around, we probably would have interviewed him.

Mr. BEN-VENISTE. With respect to the investigation that was done, you were aware that not only handwriting analysis was done on the note, first I think by the Capitol Police and then by the FBI to double check, belt-and-suspenders, but every reasonable effort was made to lift prints from the document?

Mr. MARGOLIS. Yes.

Mr. BEN-VENISTE. And in connection with that, we have heard testimony from Louis Huff, who was the FBI technician who actually did the work, everything that he found was consistent with the note being torn prior to the palm print which was ultimately identified as being Bernie Nussbaum's, the one identifiable print, the one print of value on the scraps of paper. Everything was consistent with that print being put on it while the note was in pieces. You are aware of that?

Mr. MARGOLIS. I don't remember that, but I am sure you're right.

Mr. BEN-VENISTE. The point I am getting to is, in addition, Louis Huff concluded that no one had attempted to obliterate any prints either by overlaying them with other prints or by utilizing some method to try to remove them, which would have destroyed the fiber of the paper. You are aware of that?

Mr. MARGOLIS. I don't recall it, but I am sure you're right.

Mr. BEN-VENISTE. From the standpoint, again, of this speculation of the note being torn, someone would have to have been very lucky if there were prints put on that note and then the note was torn up, that the prints did not overlap the tear marks because then it would have been discovered with the technology available to the FBI. Is that so?

Mr. MARGOLIS. I believe so.

Mr. BEN-VENISTE. All right.

Senator Sarbanes.

Senator SARBANES. Does Orrin want to question?

The CHAIRMAN. Yes.

Senator Hatch.

OPENING COMMENTS OF SENATOR ORRIN G. HATCH

Senator HATCH. Mr. Margolis, welcome to the Committee. Glad to have you here. Do you feel OK for about another 10 minutes?

Mr. MARGOLIS. Yes, sir, Senator.

Senator HATCH. I wish you a speedy recovery from your open heart surgery. I respect you for coming.

Mr. MARGOLIS. Thank you.

Senator HATCH. Let me cover some things just to make sure that we have got them covered. I think most of them have been. I want to make sure. You were sent by Deputy Attorney General Heymann to the White House on the 21st to discuss procedures for reviewing the documents in Mr. Foster's office. Right?

Mr. MARGOLIS. That's correct.

Senator HATCH. I understand that you are a career Department employee.

Mr. MARGOLIS. Yes, sir.

Senator HATCH. You were faced with a situation that was particularly difficult, a situation involving a high-level White House employee, and employees, I might add. Could you give us a reason why Mr. Heymann chose you to do this job?

Mr. MARGOLIS. I would like to think that it's because, A, he wanted a career person to do it rather than a political appointee.

Senator HATCH. Right.

Mr. MARGOLIS. And that, B, of the career people, that he held me in some regard.

Senator HATCH. Well, you have an excellent reputation, and I am sure that he chose you for your judgment, your integrity, your ability and, of course, the fact that you are a career employee.

Mr. MARGOLIS. And I was there that day.

Senator HATCH. Well, yes.

You and thousands of others. But he believed that you would provide an independent arbitration in this matter.

Mr. MARGOLIS. Yes.

Senator HATCH. Now, we know that you went to the White House to meet with Mr. Nussbaum and during that meeting, you discussed a search protocol to review the documents. Right?

Mr. MARGOLIS. Yes.

Senator HATCH. What method did you use to review the documents? Is it as it was described by the other witnesses, look at the first page?

Mr. MARGOLIS. That was the proposal.

Senator HATCH. Yes.

Mr. MARGOLIS. We would look at the first page or two of each document, we being Roger Adams and I, to determine its relevance. That was our proposal. That's what I was told by Mr. Heymann was his agreement in principle with Mr. Nussbaum before we went over, and that was my understanding that Mr. Nussbaum agreed to when we left that night and we were to actually effectuate the agreement the next morning.

Senator HATCH. Right. Now, I know that you have been involved in criminal investigations before, or investigations involving crimes.

Mr. MARGOLIS. Yes.

Senator HATCH. Testimony has been given that you don't generally search a lawyer's office. Why would you have wanted to review the documents in Mr. Foster's office?

Mr. MARGOLIS. To determine whether there was a suicide note or an extortion note, a blackmail note, or any other bright-line indi-

cation that he had taken his own life and why he had taken his own life, because there was a strong suspicion at that time that this was a suicide.

Senator HATCH. OK.

Mr. MARGOLIS. It was a very narrow purpose.

Senator HATCH. Mr. Nussbaum has told this Committee that he was concerned that executive privilege might be breached if he allowed you to review these documents.

Now, you have mentioned that during that time you held the highest security clearance, Code word?

Mr. MARGOLIS. Correct.

Senator HATCH. You had worked with documents protected by executive privilege before. Right?

Mr. MARGOLIS. Correct. I knew that I was a member of the Executive Branch, and usually—I hate to say this, but when I use the phrase and hear the phrase executive privilege, the party on the other side is always you people.

Senator HATCH. Yes, it's us.

Mr. MARGOLIS. Not the Department of Justice.

Senator HATCH. Well, in your career with Justice, have you ever been in a situation in which a claim of executive privilege has been made against you as an Executive Branch lawyer?

Mr. MARGOLIS. No, except for this.

Senator HATCH. Except for this case.

Mr. MARGOLIS. Yes.

Senator HATCH. Now, you have testified that during that meeting with Mr. Nussbaum in the White House, you reached an agreement with respect to the manner in which the document review should proceed. Right?

Mr. MARGOLIS. That's my understanding.

Senator HATCH. I know this seems repetitive, but could you describe the terms of the agreement?

Mr. MARGOLIS. That Mr. Adams and I would review each document as to its first page or two so that we could determine whether they were relevant, whether that document was relevant to our investigation.

As I indicated earlier today, the risk from that would be if we looked at a document that looked like a real estate conveyance and we looked at the first couple of pages and made that judgment, it was conceivable that on page 68 there would be a little note saying, "I am going to kill myself for the following reason," that we would miss because we only looked at the first couple of pages.

Senator HATCH. Right.

Mr. MARGOLIS. But we were willing to run that risk.

Senator HATCH. But you seem certain about the existence of that agreement. Right?

Mr. MARGOLIS. That's correct. I was that day, Senator, and I am today.

Senator HATCH. You are sure that Mr. Nussbaum understood that agreement?

Mr. MARGOLIS. I am certain. I was certain then and I am certain now.

Senator HATCH. Lawyers often reach agreement on how to proceed in matters. In the circumstances of this case, did you fully expect that Mr. Nussbaum would honor your agreement?

Mr. MARGOLIS. Yes.

Senator HATCH. Testimony has been given that during the meeting with Mr. Nussbaum, Mr. Neuwirth objected to the terms of that agreement. Now, does that comport with your recollection of the event?

Mr. MARGOLIS. Not exactly. I believe he didn't object. I believe what he said was, my clear recollection is, "Let me sum up," this is Mr. Neuwirth talking, "Let me sum up what the agreement is that we have reached tonight," and then he stated an agreement that I did not and do not believe was our agreement. He said, "We have all agreed that Bernie will review the documents for relevance and privilege, and he will give you what he determines he can give you."

Senator HATCH. What did Mr. Nussbaum say or do in response to Mr. Neuwirth's assertions?

Mr. MARGOLIS. I said that's exactly what we haven't agreed to, and we have agreed that we, Roger and I, will do it, and my clear recollection is that Mr. Nussbaum told Mr. Neuwirth that I was right.

Senator HATCH. Now, you know that Mr. Nussbaum claims that no such agreement has been reached?

Mr. MARGOLIS. I know that.

Senator HATCH. He told this Committee on page 22 of his opening statement that, "I said I would consider that option. I did not say I would agree to it." He says on the same page, "If the Justice Department officials believe that we had reached an agreement after July 21, after our July 21 meeting, then a misunderstanding and miscommunication occurred." Was there, in your opinion, any "misunderstanding" or "miscommunication" at the time the agreement was made?

Mr. MARGOLIS. Not in my opinion.

Senator HATCH. Do you not think, contrary to Mr. Nussbaum's suggestions yesterday, that with the passage of time you might have forgotten or confused the details of that agreement?

Mr. MARGOLIS. I suspect that's exactly what happened, that he confused the first day with the second day. When he testified here, as you read, that he said, "All I agreed to was that I would consider that option," that is certainly, if you put aside our first day's discussion and you focus in only on our second day's discussion, when I testified that he changed the rules and then I argued with him, he did say, "I will consider what you are arguing. I will take that into consideration."

Senator HATCH. But the second day was an actual agreement, and you are not confused on it?

Mr. MARGOLIS. I don't believe I am confused.

Senator HATCH. In fact, are you aware of the fact that notes were made of the meeting between yourself and Mr. Nussbaum by both Mr. Adams and Mr. Heymann?

Mr. MARGOLIS. Well, I think Mr. Adams made the notes a couple of days later.

Senator HATCH. Right.

Mr. MARGOLIS. And Mr. Heymann, his notes would have been more of what we told him.

Senator HATCH. You have seen those notes?

Mr. MARGOLIS. I have them here.

Senator HATCH. Mr. Nussbaum has suggested that the notes were made sometime after the actual event. You have confirmed that, but, in your opinion, Mr. Margolis, do the notes taken by Mr. Heymann and Mr. Adams accurately reflect what occurred at that meeting?

Mr. MARGOLIS. We should concentrate, Mr. Chairman, on what Roger Adams wrote, because Mr. Heymann's really is hearsay.

Senator HATCH. Well, then, Roger Adams.

Mr. MARGOLIS. It's just based on what we told him, yes.

Senator SARBANES. I'm sorry, I didn't hear that. Mr. Heymann's are really what?

Mr. MARGOLIS. Mr. Heymann's notes are hearsay, rank hearsay.

Senator HATCH. Right. But what Mr. Adams wrote, is that correct or not correct?

Mr. MARGOLIS. Yes.

Senator HATCH. It was correct?

Mr. MARGOLIS. Yes.

Senator HATCH. Mr. Nussbaum denies that, and I might add Mr. Adams, Mr. Salter, despite Mr. Nussbaum's claim yesterday and the FBI agents at the scene clearly remember the same thing that you do. Now, Mr. Margolis, I appreciate your testimony today. I want to summarize what I think concerns me and many other Members of this Committee.

This case is riddled with significant conflicts in testimony. How these conflicts are resolved represents the difference between what some think are willful obstruction of justice, which was a central, of course, criminal violation in Watergate, or simply panic and bad judgment, which it could very well be. Those who worked closely with the President have one story, and those who work for the Justice Department and law enforcement, all neutral and professional civil servants of the highest integrity, have a completely different recollection of what happened here.

No. 1, Mr. Nussbaum claims that you never reached an agreement on July 21 with him to permit you and Mr. Adams to review the documents in Mr. Foster's office. Mr. Neuwirth, the Deputy White House Counsel, supports that story. Yet Mr. Roger Adams, a career Justice prosecutor, and Mr. Phil Heymann, a Harvard Law School professor and Deputy Attorney General of the United States, support your version of the events. FBI agents in a teletype similarly support the existence of such an agreement.

No. 2, Mr. Neuwirth and Mr. Nussbaum claim that Neuwirth never objected to the agreement and that Mr. Nussbaum did not overrule him. Yet again, you, Mr. Margolis, Mr. Adams, and Mr. Heymann say that Neuwirth did object and that Mr. Nussbaum did overrule him.

No. 3, Mr. Nussbaum claimed that he did not remember talking to Deputy Attorney General Heymann the morning of July 22, but Mr. Heymann says that he did talk to him on the phone. Mr. Nussbaum said that Mr. Heymann did not express anger, did not tell him that he was making a terrible mistake. Mr. Nussbaum claims

that he did not tell Mr. Heymann that he would talk to other people about the procedures and call him back. Yet Mr. Heymann, a professor and public servant of the highest integrity, you have testified to that, and others as well, and I know him personally and believe that, says that Mr. Nussbaum——

The CHAIRMAN. Senator Hatch, at that point, in addition, I think Mr. Margolis, you said you put Mr. Heymann on the phone with Mr. Nussbaum.

Senator HATCH. That's right.

The CHAIRMAN. Is that correct?

Mr. MARGOLIS. There was no doubt in my mind, that's right, they talked.

The CHAIRMAN. In other words, you were speaking to Phil Heymann in the afternoon.

Mr. MARGOLIS. In the morning.

The CHAIRMAN. In the morning and then you put Mr. Nussbaum on with him?

Mr. MARGOLIS. That's right. This phone conversation took place in Mr. Nussbaum's own office.

The CHAIRMAN. Excuse me, Senator.

Senator HATCH. Mr. Chairman, if I could just sum up the last few sentences here. I know my time is up. But Mr. Heymann says that Mr. Nussbaum did say those things and that he did promise to call before making a decision. Now, I find some of these contradictions and difficulties deeply troubling. You know, these are many. You would have to say there are many other such conflicts that concern, I think, people on this Committee.

For example, the differences in testimony concerning Ms. Susan Thomases' phone call to Mr. Nussbaum, the communication of the First Lady's concerns and the First Lady's calls or call to Mr. Nussbaum on July 22. These calls were critical because they were the only significant events which occurred between the time Mr. Nussbaum reached an agreement with you and Mr. Adams and the time he decided to not honor what you consider to be agreements. These are matters that I think are of great concern to this Committee.

I know you, I know your reputation, you are everything that you would want in a law enforcement official, honest, decent, intelligent, very skilled, and I think you serve your country well, and I appreciate you testifying here today. Thank you for being here.

Mr. MARGOLIS. I appreciate that, Senator, and I think you also know how much it pains me to be here today.

Senator HATCH. Of course, I do. It pains me too.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Margolis, the notes of Mr. Heymann that you referred to that you were asked about by Senator Hatch and you said, well, you would rather focus on Mr. Adams because those were rank hearsay, those are the notes that Mr. Heymann put down just before he left the Justice Department some 9 months, I think, after this event that we're talking about.

Mr. MARGOLIS. About 6 months.

Senator SARBANES. Pardon?

Mr. MARGOLIS. About 6 months.

Senator SARBANES. March 1994, I think.

Mr. MARGOLIS. We sat down in late January.

Senator SARBANES. OK.

Mr. MARGOLIS. He left in February.

Senator SARBANES. All right. So he made those notes on the basis of what people were telling him at the time and I guess his own recollection of some of these events.

Mr. MARGOLIS. That's right. But as to what happened in Mr. Nussbaum's office, that's rank hearsay that he got from Roger and I, not from any firsthand knowledge. That's what I meant.

Senator SARBANES. Roger Adams made his notes about a week after the event, I think?

Mr. MARGOLIS. Just about.

Senator SARBANES. Now, I take it everyone was concerned to memorialize things, maybe, or try to get something down after the discovery——

Mr. MARGOLIS. No, Senator, I never take notes.

Senator SARBANES. I understand that.

Discovery of the writing and the criticism that then emerged in the press. There seemed to be a lot of sensitivity to the criticism. In fact, the Justice Department, as I understand it, was very upset by this reference in the paper, which I think was unfortunate because as we look at what the White House issued, it was not the language that was in the newspaper story. So there was a disconnect there, and of course, the Justice Department related to the language that was in the newspaper story.

Mr. MARGOLIS. Correct. I was upset. I was personally upset.

Senator SARBANES. Oh, I understand that, and so was Mr. Heymann, as I understand it from his testimony here today. The Park Police, I guess, were also upset during this period, were they not?

Mr. MARGOLIS. Their upset, according to Mr. Collier, went far beyond that press statement. They felt and he felt that they were being bullied.

Senator SARBANES. Yes. There was a considerable concern on the part of the law enforcement people, somehow, though, that they were being criticized for not having done a full investigation. Is that right? Once the note was found.

Mr. MARGOLIS. I believe I would have to concede that that is a legitimate criticism, that we at the Justice Department have to answer and me in particular because I was responsible for that decision not to walk away. That was my decision.

Senator SARBANES. All right. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Then a couple of days after——

Mr. MARGOLIS. You're going to ask me the difference between hearsay and rank hearsay. Right? I knew you were going to do that.

Mr. BEN-VENISTE. No, it's too late to do that. I am not going to ask you why, as a prosecutor for all those years, you don't take notes, because I try to get Jencks material every once in a while from you.

Mr. MARGOLIS. And I believe you learned that practice in the Southern District.

Mr. BEN-VENISTE. I did, and we all had a lot of fun in those days.

But Mr. Adams wrote his memo a couple of days after the note was found reflecting conversations that had occurred the previous week.

Mr. MARGOLIS. You know, I believe, and Roger would be a better witness of this, but I believe he wrote that memo at Mr. Heymann's request.

Mr. BEN-VENISTE. Let me show you a memo that reflects a meeting which you had with Tom Collier and Roger Adams.

Mr. MARGOLIS. Yes.

Mr. BEN-VENISTE. If we could hand the witness—do you have it handy? It's F-139. It's a DOJ document.

Mr. MARGOLIS. I have it now.

Mr. BEN-VENISTE. I know, David, you haven't had a chance to study these materials, so I want to give you whatever time you need to look at it. It appears to reflect a meeting with Tom Collier on July 29, 1993, that you and Roger Adams attended.

Mr. MARGOLIS. Yes.

Mr. BEN-VENISTE. Do you remember that meeting?

Mr. MARGOLIS. Yes.

Mr. BEN-VENISTE. Now, at that meeting, Tom Collier was really venting his concern.

Mr. MARGOLIS. Yes.

Mr. BEN-VENISTE. On behalf of his Park Police, since that was his agency under his supervision, about what had happened and reflected the fact that they were upset with the kind of publicity that had gone on and now they're looking back to the following—to the prior week and now they've got a lot of bruised feelings and they're being criticized for the way the investigation has been run.

Mr. MARGOLIS. Yes.

Mr. BEN-VENISTE. Take a look at where it says "Next topic." The next topic was——

Mr. MARGOLIS. Which page is this?

Mr. BEN-VENISTE. On the first page.

Mr. MARGOLIS. On the first page?

Mr. BEN-VENISTE. Right under the line that comes across about a third of the way down.

Mr. MARGOLIS. Yes.

Mr. BEN-VENISTE. Next topic was David Margolis and Roger Adams told Collier of the Wednesday meeting where we went over the ground rules for the search the next day. Do you see that?

Mr. MARGOLIS. Yes.

Mr. BEN-VENISTE. In the meeting with Collier, were you trying to be candid with him?

Mr. MARGOLIS. Yes.

Mr. BEN-VENISTE. And tell him whatever was concerning you in terms of, more or less——

Mr. MARGOLIS. To let him know how this all developed. He might have. I have a vague recollection of him asking, how we came to do the search in the way we did.

Mr. BEN-VENISTE. Here he said, "Tell Collier of the meeting between David Margolis and Roger Adams and Nussbaum on Thursday morning at which Bernie said he would examine the documents himself and we would not see them. I told him how we argued with Bernie that that was not a good idea, a big mistake. Nussbaum made us wait while he considered the question and after 1:00 p.m. conducted the search with him and his staff only actually seeing the documents." Do you see that?

Mr. MARGOLIS. Yes.

Mr. BEN-VENISTE. In that summary of that part of the meeting with Collier, is it correct that at least it's not reflected in the memo that Bernie went back on a deal.

Mr. MARGOLIS. It does not say that. That's correct.

Mr. BEN-VENISTE. But nevertheless, that is your recollection?

Mr. MARGOLIS. Absolutely.

Mr. BEN-VENISTE. Mr. Chairman, I think that has exhausted my inquiry.

The CHAIRMAN. We can finish up by 5:30 p.m. I know Senator Shelby has several questions and Mr. Chertoff has several questions. I am going to recognize Senator Shelby.

Senator SHELBY. I thank you, Mr. Chairman. I will try to be brief. I appreciate Mr. Margolis' being here today.

Mr. Margolis, just to carry you back again to the time that the so-called note was discovered or rediscovered, when did the Justice Department learn of that? Not immediately?

Mr. MARGOLIS. No. And while I don't have in front of me the date, it was the night that Mr. Heymann and the Attorney General went to the White House and Mr. Heymann called me from there.

Senator SHELBY. Did they go to the White House and then they were informed that the White House, that they had found the so-called note?

Mr. MARGOLIS. My best recollection is that they weren't informed of the discovery of the note until they were actually at the White House. But I may be wrong about that.

Senator SHELBY. Was this some more or less 27 hours after the note was first so-called discovered?

Mr. MARGOLIS. I believe that's about right.

Senator SHELBY. Is that unusual in a high-level investigation like this?

Mr. MARGOLIS. Well, Senator, in a lot of ways this is not a normal investigation—

Senator SHELBY. No, it's not.

Mr. MARGOLIS. —because of the people who it involves, and the sensitivities, and I would say I would like to have that note immediately. But the delay of 27 hours, I don't see what practical significance that made. What it did, once again, was it's the optics, people then begin once again to question the bona fides and that's the problem.

Senator SHELBY. It fueled the suspicion.

Mr. MARGOLIS. Yes.

Senator SHELBY. Did it not, sir?

Mr. MARGOLIS. Exactly.

Senator SHELBY. Mr. Margolis, I know you don't know, but do you believe that those 27 pieces of paper, yellow pieces of paper, torn out of a yellow sheet, a yellow pad, a legal pad, do you believe that they stayed in that briefcase for some 6 days from the date of his death till they were so-called discovered? Do you believe this of your own, or do you doubt it?

Mr. MARGOLIS. I did not believe that until I first heard what Mr. Spafford said.

Senator SHELBY. Sure.

Mr. MARGOLIS. Now I learned this afternoon that there are other people who say the same thing, several other people. So I just don't know.

Senator SHELBY. I know you don't know.

Mr. MARGOLIS. If you had asked me that question 3 weeks ago——

Senator SHELBY. Do you have some doubt?

Mr. MARGOLIS. I have some doubt as to what happened, yes, sir.

Senator SHELBY. OK.

Mr. MARGOLIS. That's why I said before, Senator, I am glad Ken Starr has to judge it now.

Senator SHELBY. Well, you're very candid.

Is it incomprehensible that 5 or 6 days went on, no one looked at that briefcase after was it Mr. Sloan that told Mr. Nussbaum initially that there were yellow pieces of paper at the bottom of that briefcase and that no one looked at it? I mean, just common sense, no one looked at it during that interval?

Mr. MARGOLIS. I have no explanation, other than incompetence or being busy with other things. I say once again I would like to think that if I had gone through the briefcase——

Senator SHELBY. You would have looked at it first, would you not?

Mr. MARGOLIS. I would have found it, I believe.

Senator SHELBY. You would have found it. Would it have given you reason to believe that somebody said, "Here's his briefcase. Oh, Bernie, there are some pieces of paper in the bottom of the briefcase," and you just move it on and don't look at it?

Mr. MARGOLIS. I would have taken it out and then I wouldn't have put it together myself because that would have probably taken 6 years, but I would have found somebody who could do it.

Senator SHELBY. Thank you.

Mr. MARGOLIS. But I should add that's what I get paid for. That's why I should have been allowed to do this.

Senator SHELBY. Sure.

Mr. CHERTOFF. I just wanted to ask you a couple of final questions, Mr. Margolis.

On the issue of Mr. Heymann's notes, which you have in front of you, those were prepared shortly before he left the Department in 1994. Right?

Mr. MARGOLIS. Correct.

Mr. CHERTOFF. My understanding is that you, he, Mr. Adams, and a couple of other people sat down to kind of pull together the records of these events before he left?

Mr. MARGOLIS. That's correct. In anticipation of his being interviewed by the Independent Counsel at that time.

Mr. CHERTOFF. Of course, to the extent that that reflects his recollection of his own firsthand conversations, that is not hearsay. Right?

Mr. MARGOLIS. That's correct.

Mr. CHERTOFF. To the extent it reflects what you and Mr. Adams told him, it is what you and Mr. Adams told him really as part of your official responsibilities as employees of the U.S. Government.

Mr. MARGOLIS. Oh, sure.

Mr. CHERTOFF. So, although it's rank hearsay, it's what would be considered admissible hearsay in court?

Mr. MARGOLIS. So it's really just plain hearsay.

Mr. CHERTOFF. Right.

Mr. MARGOLIS. OK.

Mr. CHERTOFF. Now let me ask you, did you ever read the 302's of the interviews of various people that were conducted by Mr. Nussbaum, Mr. Neuwirth, by the FBI as part of this obstruction of justice investigation?

Mr. MARGOLIS. At the time, I did.

Mr. CHERTOFF. None of the 302's we have seen, or the reports, make mention of the fact that, among other people who were in the room with the note on the 26th, was the First Lady. When did you first learn that the First Lady was in the room on the 26th with the note after it had been assembled?

Mr. MARGOLIS. I am not sure that I know that. That does not ring a bell with me. The 26th being the day that the note was found?

Mr. CHERTOFF. Right. On the day the note was assembled—was supposedly found by Mr. Neuwirth, and it was assembled in Mr. Nussbaum's office. The testimony we have had is that Mr. Burton came in. You knew that. Right?

Mr. MARGOLIS. I am not sure I did. I probably did, but I don't remember.

Mr. CHERTOFF. It's in the 302.

Mr. MARGOLIS. OK. Then I did.

Mr. CHERTOFF. The 302 also indicates that Mr. Nussbaum was in there looking at the note and Mr. Neuwirth was in there with the note.

Mr. MARGOLIS. All at the same time, all of these people at the same time?

Mr. CHERTOFF. Yes, during that evening. The 302's we have seen do not indicate, and in fact the notes, the underlying notes taken by Agent Salter of his interview with Steve Neuwirth do not indicate, that the First Lady of the United States was also in there for some period of time, some short period of time on the 26th, and was at least shown the note if she didn't read it.

Mr. MARGOLIS. Mr. Neuwirth would or would not know that?

Mr. CHERTOFF. According to all the testimony we have had heard, this is one thing that has been consistent, Mr. Neuwirth was there and Mr. Nussbaum was there and, in fact, Mr. Nussbaum brought the First Lady in.

Mr. MARGOLIS. OK.

Mr. CHERTOFF. That has been the consistent testimony here, and my understanding from your previous answer is that you did not know from the investigative work done by the FBI on the obstruction of justice investigation, that the First Lady had been in that room with the note, until sitting right here. I have told you that.

Mr. MARGOLIS. That's right. If I did know, I certainly don't remember it. But if it wasn't in the report, I don't know how I would have known.

Mr. CHERTOFF. Now, finally, let me ask you a question that relates to what Mr. Ben-Veniste talked about with the fingerprints. He said that the fingerprint expert had indicated that the way in

which the note was torn up was consistent with it not having been torn up after it was discovered. Of course, I guess it follows from that it is also consistent that it was torn up after it was discovered. Were you aware that Mr. Foster's fingerprints were not discovered on the note?

Mr. MARGOLIS. That's my recollection.

Mr. CHERTOFF. Do you know whether—I mean you can decline to answer on the grounds of expertise—did it seem to you likely that if someone were to take a piece of yellow paper, tear it into 26, 27, 28 pieces, applying whatever strength is necessary in order to make those tears, does it seem to you likely that a fingerprint would be left?

Mr. MARGOLIS. I do have enough experience to know that you can never tell what is going to happen with fingerprints.

Mr. CHERTOFF. It is also clear that if one had two pieces of paper and folded them over and then tore them up into 28 pieces, it would only be the outside piece of paper, the second piece of paper, that would have the prints.

Mr. MARGOLIS. Yes.

Mr. CHERTOFF. Thank you very much, Mr. Margolis.

Mr. MARGOLIS. Can I go back?

Mr. CHERTOFF. Sure.

Mr. MARGOLIS. The question about the First Lady being present in the room, that would be of no professional interest to me to know that one way or the other. The only interest would be if people were being interviewed and were purporting to say—identify all the people in the room and they left her out. That, their leaving her out, would be of interest to me.

Mr. CHERTOFF. Well, that is a very good point. Let me make it clear. We have had a considerable amount of testimony here from Agent Salter. Mr. Neuwirth was confronted with this. We have not only Mr. Neuwirth's 302, but also the underlying agent notes were produced. Mr. Nussbaum, we have his 302. We have Park Police reports. In none of those reports when there is an account given of what occurred and who came in and who came out, and particularly Mr. Neuwirth's, the notes of Mr. Neuwirth's interview is like a narrative the agent is copying down—that these narratives consistently talk about Mr. Burton being present, Mr. Neuwirth being present, Mr. Nussbaum being present, and Mr. McLarty being called. In not one of them is there any record of anyone having mentioned the fact that the First Lady was present in the room. I take it that you would consider that significant?

Mr. MARGOLIS. Yes. I think it's one of those examples that Phil gave of where you, for obvious motivation to not embarrass your boss—if there is any embarrassment there, I don't know what there would be—you cast significant suspicion on an otherwise legitimate operation.

Mr. CHERTOFF. You would want to know why it is that people decided to omit the presence of one person who was in the room during the events of that day?

Mr. MARGOLIS. Yes.

Mr. CHERTOFF. Thank you, Mr. Margolis.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Well, Mr. Chairman, I am going to make an observation.

The CHAIRMAN. Sure.

Senator SARBANES. Mr. Ben-Veniste wants to make an observation. Then I will yield to Senator Dodd, who I think has one.

Mr. Margolis, Senator Shelby made quite a to-do about this note not being discovered for 6 days in his questioning to you.

Mr. MARGOLIS. Yes.

Senator SARBANES. Now, you were in the office on the afternoon of Thursday, July 22. Is that correct?

Mr. MARGOLIS. Correct.

Senator SARBANES. That is when Nussbaum took the files out of the briefcase and apparently then afterwards someone put the briefcase back against the wall behind his desk or by his desk. I am not sure which.

The next day was Friday. That was the day Vince Foster's funeral was held in Little Rock. Are you aware that apparently everyone out of the Counsel's Office went to the funeral?

Mr. MARGOLIS. It wouldn't surprise me.

Senator SARBANES. Saturday and Sunday, Nussbaum testified earlier, he did not come into the office and, in fact, told his people to take the weekend off because they had been through a very harrowing week. That wouldn't surprise you either, I assume?

Mr. MARGOLIS. No.

Senator SARBANES. So, effectively, Monday, the 26th, was the first working day after Thursday, the 22nd, and it is on that day that Neuwirth, in packing this thing up, found these papers.

I don't make a big point of it, but I think it's important to get on the record, since it was constantly asserted, well, 6 days passed and so forth and so on. Literally, in a working sense, it was found the next day. I mean, you were there on Thursday.

Mr. MARGOLIS. Correct.

Senator SARBANES. Friday, everyone went to the funeral. Saturday and Sunday, the office was shut down and people were away. Monday, they came in. Monday is the day that Neuwirth had this matter.

I think Mr. Ben-Veniste has one quick point, and then I know Senator Dodd has to be recognized.

Mr. BEN-VENISTE. Putting aside fingerprints, because I think you have given the answer that whether somebody is going to leave fingerprints tearing up a note has got a lot to do with the individual characteristics of the person, whether you sweat, you make the motion not reflected in the record of rubbing your fingers together, whether they sweat, what the conditions are in the room, how long ago the person has washed his hands and so forth. Correct?

Mr. MARGOLIS. Correct.

Mr. BEN-VENISTE. So that wouldn't surprise you that no fingerprints of Mr. Foster were on the note?

Mr. MARGOLIS. Correct.

Mr. BEN-VENISTE. With respect to the FBI, though, in producing 302 reports, a lot of it depends on what the question is that is asked?

Mr. MARGOLIS. Excuse me?

Mr. BEN-VENISTE. In terms of what answer you get and evaluating the answers that are reflected in a 302 report, is much determined on what question was actually asked by the agent?

Mr. MARGOLIS. Correct.

Mr. BEN-VENISTE. Where you see a reference that the note is touched by Bernie Nussbaum, Steven Neuwirth, and maybe Bill Burton, you would assume that the question was who touched the note?

Mr. MARGOLIS. You would assume, but you wouldn't know. Yes.

Mr. BEN-VENISTE. I have nothing further. Thank you very much.

Senator SARBANES. Senator Dodd.

Senator DODD. Thank you, Senator Sarbanes.

Thank you, Mr. Margolis.

Mr. MARGOLIS. Senator.

Senator DODD. I apologize for not getting over here at the outset of your comments and I appreciate under the circumstances health-wise that you were able to give us some time here.

Mr. MARGOLIS. I should point out, Senator, I joined the U.S. Attorney's office on the recommendation of your father in Hartford in 1965.

Senator DODD. Yes, it's nice to see you again. Thank you for mentioning it, too. I appreciate your doing that very much.

I don't have any specific questions, but, Mr. Chairman, I would like, and I gather we are going to have some votes coming up, and if I could, I would just like to make a couple of observations, the first of which is about you, Mr. Chairman.

I think you have done a first-rate job with these hearings. This is not an easy matter when you have emotional questions like this and to deal with it effectively. I just want to begin these short and brief remarks by thanking you for the very fine job that you have done, the fine job that Mr. Chertoff has done as well, a very, very competent, extremely cooperative. I know those of us on this side and I am confident each Member will express their own views on this, but I wanted to take the opportunity to thank both of you. I realize we are going to have more time together, I gather, this fall.

I may reserve final judgment on those comments.

So I will limit them to this phase. I do not want to get carried away here, Mr. Chairman.

The CHAIRMAN. Subject to withdrawal.

Senator DODD. Subject to modification, at any rate.

Second, to thank my colleague and dear friend from Maryland, Senator Sarbanes, for the tremendous job he has done as well. I know in working with you he spent a lot of hours, but the public doesn't always see the amount of time that is spent between Members and staff to work out how these hearings will be conducted and how the work will be done.

Senator Sarbanes has made unique and many contributions to this country over the years, and I suspect, and I haven't asked him, but this is not something he planned on spending a good part of a career out here, but he has done a magnificent job, in my view, over the last number of months. We are very fortunate to have Richard Ben-Veniste and his staff as well. I am deeply grateful to all of them for the tremendous work on this first phase.

Mr. Chairman, as I said about 4 weeks ago, I guess, when we started this, our charge, as I understood it, and every person may have a different point of view, but our charge during this set of hearings was to answer a narrowly tailored question, despite sometimes we wander off in different directions. The question that I understood it to be, anyway, was: Did anyone at the White House impede the police investigation of Vince Foster's tragic suicide?

That was really the bottom-line question for us, and having spent these past 4 weeks now, we have listened to 32 witnesses, there have been 62 depositions, testifying for over 80 hours before this Committee over some 13 days, in my view, the answer to that question is "no." I have deep respect for all the witnesses who have been here. I asked every relevant witness that came before the Committee, that was from the support staff and people who worked at the White House, some 20 witnesses who are direct employees of the White House, a series of questions.

I wanted to ask each one of them very pointedly the question that it was important to have for the record, and the sum and substance of those questions was: Was any attempt made to destroy documents or hide them from law enforcement officials during the investigation? All 20, I would point out, which I know my colleagues are all aware of all, 20 unequivocally answered negatively to that question, that they had not.

Were there conflicts and contradictions in the testimony? Absolutely. And I think as Senator Sarbanes said earlier today, and I underscore it, I think all of us, and I presume Mr. Margolis, with years of experience, when you get all your witnesses singing out of the same page and the same hymn book with the same recollections, you begin to get suspicious.

I remember in law school that a professor of mine in criminal law used to say you never knew what was going to come, but would have someone come into the classroom and engage in this fake holdup. It would last about maybe 45 seconds or a minute, and then race out of the room. And there may have been 50, 60, 70 students, and then for the next hour he would ask each one of us to write down exactly what we saw, exactly what we heard, exactly what occurred.

It was not uncommon to get almost as many different answers to those questions as there were students in that room, a minute after the event had occurred, not 2 years after an event occurred. It is always an interesting exercise as to what people who have no intention of engaging in any corruption of any kind may see when faced with a similar set of circumstances.

At any rate, I wasn't surprised by some of those contradictions, and certainly while people's recollections differ when you ask them who they called or talked to at precise moments, again I think any average, normal person would expect that those would be difficult. That should not surprise us. Obviously, as I said, many of us have a hard time remembering what we did the day before.

Nevertheless, the impression I was left with by these contradictions was not people conspiring to do something venal. I don't think I listened to a single witness that I thought at the end of it they were lying. I think they honestly were reporting to us what they

saw, what they thought they heard, what they thought they did. And I include all of the witnesses who were before us.

People were in shock, obviously. People were grieving. Someone they had worked with, that they had loved and had known, in some cases had known all their lives, had taken his own life. It is certainly easy, as all of us know, to second-guess difficult decisions made during times like that.

Were mistakes made? Absolutely. With the benefit of hindsight, can we question the appearance of some actions and judgment, some decisions? Absolutely. No question about it, and we certainly have. But at the end of the day, as I said, mistakes and bad political judgment are a far cry, in my view, from illegality or unethical behavior. Therefore, there is no evidence, as I see, that anyone did anything illegal or unethical. Even the sharpest critics of the White House have stated pretty categorically that they did not see anything illegal or unethical. Disagreed with them, thought they could have made some better judgments on some calls, but I have never heard even the sharpest critics say that.

So, Mr. Chairman, there are lots of theories, of course, spun at hearings, and these set of hearings are no different, based, in some cases, on innuendo and circumstantial evidence. And the normal contradictions that are to be expected when 32 witnesses, 61 depositions where people are trying to remember minute details that occurred in the midst of an incredible emotional event more than 2 years ago.

This was a suicide investigation. Law enforcement officials may have been upset about the way they were treated, perhaps with some good cause and reason. But they all confirmed when they testified before us here, that one of the conduct that we have spent these days reliving affected the results, the ultimate results, of their investigation.

After all of the hearings and after listening to all of these witnesses, at least for my part, Mr. Chairman, as one Member of this Committee, I have concluded that: No. 1, Vince Foster tragically committed suicide; No. 2, Whitewater had nothing to do with his tragic death; and, No. 3, there is no evidence that anyone tried to hide Whitewater documents or any other documents that were destroyed or concealed from law enforcement officials.

So, Mr. Chairman, again, I ask that we might include as well, and I say this only because I think people ought to try and keep some of this in perspective, based on the investigations done so far by our two Independent Counsels, Mr. Fiske and Mr. Starr, the work by the IRS and the FBI, at least up to March of this year, in excess of \$18 million has been spent, including our work here.

Now, I voted for these resolutions. I think we've got to go through this process. But there are a lot of people looking at these details, and again I understand that, but to put it in perspective and context, I think it's important to note that there is a tremendous amount of resource allocation, over \$1 million between October and March of last year and this year, just on FBI travel on this case alone, to give you some idea of the magnitude of it.

But at any rate, I know we are going to have other sets of hearings coming up on these matters, but as far as this set goes regarding the matters that I think we were narrowly asked to examine,

those are my conclusions. I thank you, Mr. Chairman, and thank your staff for the manner in which this was done, and I apologize for taking a bit more time here with the red light.

The CHAIRMAN. Senator, let me thank you for your very gracious comments.

Senator Moseley-Braun.

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman.

First, I would observe that poor Mr. Margolis is still sitting there at the witness table.

The CHAIRMAN. Yes.

Senator MOSELEY-BRAUN. I don't know if we have forgotten him.

The CHAIRMAN. I want to thank him appropriately for the entire Committee.

Senator MOSELEY-BRAUN. I would like to thank Mr. Margolis also, and particularly given the circumstances of his testifying today.

Mr. MARGOLIS. Thank you, Senator.

Senator MOSELEY-BRAUN. I thank you, Mr. Chairman.

I want to associate myself with Senator Dodd's remarks. The Chairman and staff of the Ranking Member and our staff, everybody has worked together and made this a little less excruciating than it could have been, and I am very grateful for that. But at the same time, I have a short statement I would like to read but I am afraid we have a vote in progress.

The CHAIRMAN. We do.

Senator MOSELEY-BRAUN. So I don't want to take a long time, except to observe that there was a statement by our staff early today quoting Voltaire, in which he said that, "Details that lead to nothing are like baggage to an army, an impediment."

I don't know that this has been anything like an impediment, but I would dare say that, if anything, this hearing, I think, has put to rest once and for all what Senator Dodd said, Vince Foster committed suicide, it didn't have anything to do with Whitewater, there was no improper conduct here, and I think that the extensive review of detail that this Committee has afforded the American people has put some sunshine on that, and that is a positive thing. That is not an impediment; if anything, that is a contribution.

So, even though it has been an extensive, excruciating review of detail, at the same time I think it served a positive function in allowing us to look at this as extensively, I think, as possible and to be able to reach some certainty and some finality.

As we talked about at the beginning of these hearings, the good news today I think is that we really have reached the end of this road. I don't think there is anything else that could be said about the events that happened in those few days following Vince Foster's tragic death that hasn't been said already, that has not been reviewed already. This Committee has done a thorough job, and I congratulate and commend the leadership for making that possible.

The CHAIRMAN. Thank you, Senator.

Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I will be very, very brief, given the fact that there is a vote.

I first want to say that I think the Committee has conducted a set of responsible hearings over these last few weeks, and as we

move now to the next stage or phase of our work under the resolution, I do think we can take a measure of satisfaction in the work that has been done here.

That, of course, is in no small measure attributable to your efforts in chairing these hearings. We have seen previous Congressional hearings, and so we know how sometimes they can go off track, and I think if they are to have any validity, they have to have a measure of responsibility and focus to them, and I think that has been done in the course of these hearings.

We have tried very hard to work together in a cooperative fashion in carrying forward these hearings and seeking information and so forth. I want to pay my respects to the professionalism of the staff, Mr. Chertoff and his associates, Mr. Ben-Veniste and his associates.

I deeply regret and lament the leaks which occurred, one of which Mr. Margolis addressed here today at the witness table. All of us were very badly served in that respect, and I know the Chairman is as upset as I am about it, and he has expressed that very clearly here in the Committee.

I'll just sort of make this final observation. In his testimony, Mr. Heymann at one point says, "It seems to be entirely conceivable that they managed to throw suspicion over no wrongdoing." Throw suspicion over no wrongdoing.

I think as we look at this, that occurred, you can see places at which you should have done it this way, not that way, or, you know, that was not the right judgment, why didn't you do this. I don't think there was wrongdoing, but I think there was a certain amount of suspicion that was raised. Of course, there are lots of people around prepared to raise suspicion. You have to be on guard about that.

I think we had a very trying time. I am struck by the emotional trauma of this period, and I think even the witnesses, when they come here now, 2 years later, and try to behave in a very rational way in front of the Committee, I could still sense the underlying stress and trauma associated with this suicide.

Therefore, I think we have to keep that very much in mind as we look at how people were reacting and behaving. I think that had a marked impact on people, and I don't think, because we are 2 years later and out of that context, we should forget that that was the circumstance of that time.

I know we are going to go on to other matters, now, as the Committee carries out its charge from the Senate, but I do again, Mr. Chairman, want to underscore your efforts to conduct these hearings in a thorough and fair and objective way.

That doesn't mean that the perceptions of the testimony we have heard have always necessarily been the same, but I do think that we can take a measure of satisfaction that you have succeeded in steering through this set of hearings on this particular topic with gravity, severity, soberness, and responsibility, and I thank you very much for that.

The CHAIRMAN. I want to thank you, Senator Sarbanes, and all the Members, both of the Minority and the Majority, for their cooperative effort in making it possible, because any one or two could

very easily have derailed our efforts or made very difficult the work entrusted to us.

I think for the most part we have succeeded, and that has been because there has been a bipartisan effort, notwithstanding the political nature of all of the events. You can't deny that. And so I think this is extraordinary, given that political sensitivity.

I want to thank all of the Members. None of this could have taken place were it not for the professionalism of our staff, led by Mr. Chertoff for the Majority and Mr. Ben-Veniste on the Minority, and all of our staffers on both sides who have conducted themselves in an exemplary manner.

I think we can even do better, and you have alluded to some of the things, I think, that we will do to prevent leaks.

Last but not least, I want to say that the witnesses have been most cooperative. And, Mr. Margolis, maybe we do save the best for last in terms of the testimony not only that you have given today but in terms of throughout your life, throughout your career in serving people and being recognized by one Administration after another and not at a low level. You have a senior position. Democrats and Republicans have recognized your stewardship in probably the most important area of our life, the justice system. If we don't have people that we can put total faith and credibility in, in those areas, we are in trouble.

So I want to thank you because you just continue to lead by example that as you have over the years by coming before the Committee under such a strenuous circumstances. We are delighted with the rate at which you are making your recovery. We wish you continued success, and you have the thanks of this Committee.

Mr. MARGOLIS. Thank you, Mr. Chairman. If my mother is watching, I think she thinks that was a eulogy.

The CHAIRMAN. We stand in recess.

[Whereupon, at 5:55 p.m., the Committee was adjourned.]

[Prepared statements and appendix supplied for the record follow:]

APPENDIX

Justice

Morgolies > DOJ
 Admin
 2 Park Service
 2 Secret Service (Flynn)
 2 FBI

G.C.

BA
 Cliff Sloan
~~Steve Newirth~~
 Steve Newirth
 Bill Burton (Richard)

8W your description:

1) Top of Desk: White Hs News Report
 radio tape of 6/9/73 speech
 WFF calendar (xerox)

his glasses on desk

law bks

computer/secured phone user manual

Dir for secured phone

telephone dir)

campaign brochures

→ list of H/C (7/20) ←

Morgolies

documents relating to First Family (Twist, etc.)

note to Vince @ legal research re health care

correspondence re Georgetown Law Center

→ editorials ←

Morgolies wanted to know

if critical

articles on health care

internal correspondence re of: duties

letter re of: duties

memo re summer clothes

in folder entitled

→ P&C ins; motor vehicle ins. ←

letters re Pres.

note re confirm. process

job applicant

M: submit?
 anyone say
 will ~~be~~
 put you over
 head

copy re travel
 continuing education
 letters re law; WH matters
 reprint from lawyer
 judicial opinion health care case
 Otc of Gov't Ethics pamphlet
 internal memos from other counsel
 letter to Biden
 letter re WH social events
 notes on pad
 magazines
 copies of WH correspondence
 health malpractice reform
 requests for speech
 memo from VP
 budget for GC
 memo from WH w/ draft correspondence
 phone log - 5/14
 letter from Nat'l Archives re docs
 memo @ DC taxes -- memo from B Gray
 → name on page ←
 green folder with lists of issues wk'd on

2) Back chamber (on left as seated)

- — a map of metro Wash ←
- notes on issues wk'd on in GC etc
 - pad with notes on WH issues

another white pad of notes on WH issues (eg,
use of military plane, cabinet retreat, ~~the~~ volunteers, etc

yellow pad of notes re transition

→ a dictaphone ← M: have someone
listen to it;
not tape very soon

(3)

briefcase

Q: did he carry briefcase
all the time?

BN: no; used as file
folder

blue file of memos

copies of newspaper articles not @ him

4/8 letter for Hillary
H/W note

notebook of notes of meetings, GC issues

→ May calendar

M: books

memos on expenditures, gifts

memos on GC issues

log of correspondence
receipts for
travel

letter to Reno from Ode

copies of newspaper articles
(nothing sent to VF)

Ant newspaper art in VF (1/2)

Att 2 photo (picture of
staff when announced)

1/3 articles
Post art on apt(s)

note pad w/ H/W notes re GC issues

WH travel etc input rule

Standards of ethical conduct

Memo on Clinton Pres Library

memo re gifts (ethics)

correspondence re transition

memos re WH functions, inaugural
docs & legal ops (OLC)

unopened
letter to
Groom for
(included
resume)
H/W list of
people
from
transition

(4)

3 1/3 drawer

memo re potential applicant

M: 100/2

from to seal

non-official

phone messages: 1/25, 1/26, 1/22, 1/27

stationery

H/W note from staff

list of people who send out addresses
box of WCH cards

2573 on R = file drawer

~~left~~ left drawers

pls rer → list of phone #s in Witt
He ships from Feb ←
paper clips; scotch tape

* checks

* mtg book

blank envelopes

h/w note on ethics

bills for utilities, hse

invitation

anyone in PC?
any MO(s)?

→ * Charles Schwab works
"Notepad" - phone dir of people from for
notes & consp. re Witt matters
interim phone dir
magazines
lists of Witt employees

interview w/ Don
Kagan & Bush GC memos

2 File drawer on R work Mr. look at
— contains files & ←

Trash bag from that day: picked up 2 a day

1 envelope

credit union slip ←

receipts ←

OFC memos

w/ bulletins

~~bulletin~~ Pys & schedule

h/w notes re pers ←

Mr. slow balance
eyes

Mr. he clearly
waived this
abandonment

FB1: Can they code these trash?

h/w notes re work

credence : on R

→ matters in front family
mostly files re CC matters
notebooks on prospective nominees
supplies
miscellaneous
notebook re past nominations
notebook re St. Francis
magazines
copy of Forward to bk on Kennedy
Fast Rules of Civ Pro
Bk on Mkt Liberalism
3/18 letter re posters of Pres
card from friend

credence on L (w/ computer)

→ files
- mostly wk related

Mr. Separate → Some few files. tax returns
only Q is free & her
part w/ counsel? moving exp
don't give to case
counsel

Sites or official business

notebook re prop in Ark ←

bk sp Wash DC

bk shelf =

books

TV

notebook on jnd selection process

→ pictures

notebooks on GC issues

healthcare task force files

speeches

articles

legislation

note pads re health care

O/R figure to
family
pictures &
memorabilia

Me what @ computer? Please review

End tables = bks, etc

Buon bag: ^{picked up} every day

h/w notes re GC issues
all wks related

FBI - most people leave notes

Logan put together from 2
me - gunshot w/ close distance
autopsy - 2 wks

1461

Want to discuss prior efforts?
- Wilmingtoned prop?

Department of Justice

Washington, D.C. 20530



514-4745

David Margolis

~~Organized Crime & Racketeering Section~~

Criminal Division

Phone 202-633-3616

670-5050

(202) 426-6000

PETER W. MARKLAND

United States Park Police



HEADQUARTERS
1100 OHIO DRIVE, S.W.

WASHINGTON, D.C. 20242

07-11-95 12 27PM PCLB #00

The following message was found to be written on a note found in VINCENT FOSTER'S briefcase on July 26, 1993:

I made mistakes from ignorance, inexperience and overwork

I did not knowingly violate any law or standard of conduct

No one in the White House, to my knowledge, violated any law or standard of conduct, including any action in the travel office. There was no intent to benefit any individual or specific group

The FBI lied in their report to the AG

The press is covering up the illegal benefits they received from the travel staff

The GOP has lied and misrepresented its knowledge and role and covered up a prior investigation

The Ushers Office plotted to have excessive costs incurred, taking advantage of Kaki and HRC

The public will never believe the innocence of the Clintons and their loyal staff

The WSJ editors lie without consequence

I was not meant for the job or the spotlight of public life in Washington. Here ruining people is considered sport.

United States Park Police

RECLASSIFICATION OF INCIDENT

RESULTS OF INVESTIGATION

7/21/93: Bernard Nussbaum

After negotiations between the White House Counsel's Office and the Department of Justice were completed at approximately 1700 hours on 7/21/93, S/A Condon, S/A Salter, Captain Hume, and Detective Markland responded to the West Wing and spoke with Mr. Nussbaum to make arrangements for interviews and a search of Mr. Foster's office on 7/22/93. Mr. Nussbaum is Chief Counsel to the President. S/A Salter and Det. Markland obtained the following information from Mr. Nussbaum as a result of that meeting:

-Mr. Nussbaum had determined that Mr. Foster had left his office after lunch at 1310 hours on 7/20/93. Mr. Foster had not exhibited any unusual behavior on that day. Mr. Nussbaum tried to page Mr. Foster at approximately 1630 hours. After waiting a brief period of time without receiving a response, Mr. Nussbaum left and proceeded to his domicile, arriving at approximately 1900 hours.

-On 7/20/93 after Vincent Foster's death became known to him, Mr. Nussbaum responded back to the White House where he went through Mr. Foster's office with Patsy Thomassen and Maggie Williams. Mr. Foster stated that they conducted a brief, quick search to see if Mr. Foster may have left a suicide note on his desk. This search lasted from 2200 to 2400 hours. Mr. Nussbaum stated that no documents were removed from the office.

-Mr. Nussbaum stated that he learned that from about 0700-0715 hours one of the secretaries had entered Mr. Foster's office and "piled papers" on his desk top "to make it neat".

-At approximately 0900 hours Mr. Nussbaum again entered the office to look around.

-It was determined that the cleaning lady had emptied Mr. Foster's trash. The trash was retrieved and returned to the office.

-Mr. Nussbaum requested that the U.S.S.S. secure the office and the room was posted at approximately 1015 hours.

Investigation continues.

WARRANTS	IS	ICID TECH NOTIFIED	IF INVESTIGATOR NOTIFIED	PAGE 1 OF 1 PAGES
OFF	CLARENCE			
	PHOTOS			
STATUS	<input type="checkbox"/> OPEN	<input checked="" type="checkbox"/> SUSPENDED	CLOSED BY	<input type="checkbox"/> ARREST
				<input type="checkbox"/> RECEPTION
				<input type="checkbox"/> UNFOUNDED
REPORTING OFFICER	BADGE#	DATE	IS INVESTIGATOR	BADGE#
				DATE
			IF SUPERVISOR	BADGE#
				DATE

Z000346

Clifford M. Sloan
 Notes of Meeting
 July 22, 1993
 Page 7 of 16

*May calendar - review

- Expenditure - memoranda
- Rules re: what WH can spend \$\$ for
- Disbursements(?) - Exec Residence - _____ - gifts

Work - related materials - assgts to be given in office

- WHTO - Mgmt review
- Standards of Ethical Conduct
- Pres. library
- Acceptance of Gifts
- Transition planning/transition expenses
- WH functions - how to spend WH funds
- Inaugural matters/inaugural^⑥ expenses
- Memo re: potential ee [employee] - Labor Dept.
 ⑥
- Messages - before there were phone logs

Stationery

Leah Stone for society
Wilson Jones

Jim Hamilton
Bernie Hudson
Bill Burton
David Gergen
Mack McCarty

Precedent →

○
Zpts → for happier if disc.
if someone other than Bernie →
if we want to have a
decision w/me.

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 8/6/93

The following message was found to be written on a note found in VINCENT FOSTER'S briefcase on July 26, 1993:

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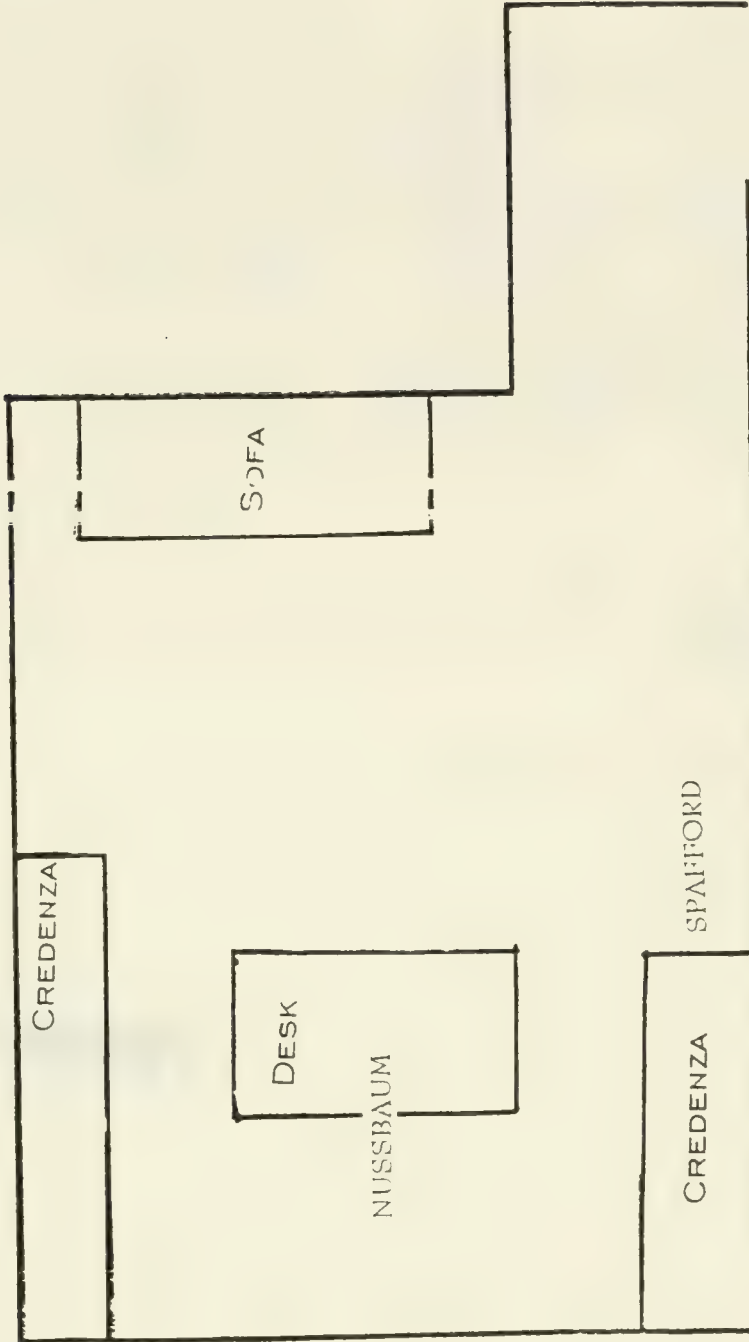
Investigation on 8/6/93 at Washington, DC File # 175B-WF-187741

by SA [REDACTED] Date dictated 8/6/93

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

48
FBI-00000061

OFFICE OF VINCENT FOSTER



First Family - SF 278

First Family - 1994 Income Tax Returns

First Family - General

HRC - CLE/Arkansas Law License

First Couple - Blind Trust

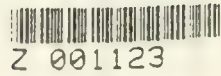
First Family - Arkansas Home

POTUS - Arkansas Office

WJC - Passport

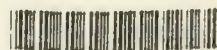
WJC - Papers

First Family - SF278 pre-POTUS



10/93	08:03	561	WW	2ND	FL	RM.208	CASTLE	SECURE ALARM
	08:03	561	WW	2ND	FL	RM.208	CONTROL CENTER 1	ACCESS SET
	20:04	561	WW	2ND	FL	RM.208	CASTLETON	ACCESS ALARM
	20:04	561	WW	2ND	FL	RM.208	CASTLETON	SECURE ALARM
	21:14	561	WW	2ND	FL	RM.208	CONTROL CENTER 1	SECURE RESET
	22:42	561	WW	2ND	FL	RM.208	O'NEILL	SECURE ALARM
	22:42	561	WW	2ND	FL	RM.208	CONTROL CENTER 1	ACCESS SET
	23:41	561	WW	2ND	FL	RM.208	O'NEILL	ACCESS ALARM
	23:41	561	WW	2ND	FL	RM.208	O'NEILL	SECURE ALARM
	23:42	561	WW	2ND	FL	RM.208	CONTROL CENTER 1	SECURE RESET
1/93	07:01	561	WW	2ND	FL	RM.208	PONN	SECURE ALARM
	07:01	561	WW	2ND	FL	RM.208	CONTROL CENTER 1	ACCESS SET
	11:20	561	WW	2ND	FL	RM.208	CONTROL CENTER TEST	SECURE ALARM
	11:20	561	WW	2ND	FL	RM.208	CONTROL CENTER	ACCESS RESET
	11:20	561	WW	2ND	FL	RM.208	CONTROL CENTER TEST	ACCESS ALARM
	20:17	561	WW	2ND	FL	RM.208	CONTROL CENTER 1	TAMPER ALARM

2-26/93 NO ALARM ACTIVITY



Z 000598

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

EXECUTIVE SESSION—SUBPOENAS

WEDNESDAY, OCTOBER 25, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE THE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 10:40 a.m., in room SH-216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato, (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

For a number of months now, we have attempted in a bipartisan manner to conduct fair, thorough, and impartial hearings on Whitewater. It is the right thing to do.

The American people have a right to know what happened. There are important public figures who have been touched by events which are the subject of this investigation.

As a consequence of the matters we are investigating, a number of high-ranking Administration figures have been discredited or resigned. Webster Hubbell, the Associate U.S. Attorney General, the number-three man at the Department of Justice, has gone to prison. William Kennedy, the former Associate White House Counsel, has left under a cloud.

We have also seen numerous other resignations from the Clinton Administration, including Deputy Treasury Secretary Roger Altman, Treasury Department's Chief of Staff Josh Steiner, and the Treasury Department's General Counsel. Indeed, the Treasury Department's Chief of Staff told us that his diary lied.

We have had endless conflicting testimony from officials inside the White House and outside.

Now we know that the Clinton White House either intentionally or not withheld information critical to this investigation concerning events we looked into just 2 months ago.

I have been criticized by some of my colleagues for not being more aggressive. But I have made a commitment to this Committee and to the American people to be fair, impartial, and thorough, and

I will continue to be so and to do so. That doesn't mean that I am not annoyed and angry that the White House has withheld evidence from this Committee.

In the past, we have had a gentleman's agreement to request information without using the force of a Congressional subpoena and to rely on the cooperation from the highest office in this country. Now we see that we have been misled and that there has been an obvious pattern of delay.

The Clinton White House cannot play games with this Congressional Oversight Committee. The heart of our democracy depends on our ability to perform our constitutional duty. We will not let the Clinton White House toy with this Committee any longer.

The evidence that we are now going to disclose reveals that critical communications among Hillary Rodham Clinton, her Chief of Staff and her good friend and confidante, Susan Thomases, was withheld from this Committee, perhaps purposefully. I find it absolutely outrageous that the White House is now releasing that information publicly, only the day before our meeting to discuss issuing subpoenas.

These communications we have now uncovered occurred on the most important day of the events that we examined during our last hearings. That was the day that documents were removed from Vince Foster's office and taken to the White House residence. By withholding this evidence, the White House deprived this Committee, the press, and the American public of the whole truth.

From this day forward, I believe we have no other recourse but to issue subpoenas for whatever information and testimony we need in order to complete our task. We will no longer play games with the Clinton White House. We have a right and an obligation to get the truth, the whole truth, and nothing but the truth.

I am now going to ask counsel to lay out for the Committee what information was withheld, to explain the significance of this information, and to make a recommendation to the Committee about which document subpoenas should be issued.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Chairman, and Members of the Committee, in order to put the information which we have received since the summer's hearings into perspective, it's useful to recall what the central question of the summer's hearings was about.

That had to do with whether there was an improper interference with Department of Justice procedures with respect to the documents that were held in Vincent Foster's office during the days following his death.

One of the critical issues that came before the Committee, and that this Committee spent weeks on, had to do with testimony that we heard from high-ranking members of the Department of Justice, including the former Deputy Attorney General, members of his office, and FBI agents, concerning an agreement they had at 5 p.m., the day after Mr. Foster died, with Mr. Nussbaum, to go into the office of Vincent Foster and review the documents that Mr. Foster had in order to determine whether there was anything relevant that should be made available to law enforcement who was examining the circumstances of Mr. Foster's death.

We had clear testimony from Mr. Heymann, Mr. Margolis, and Mr. Adams that as of 5 p.m., on July 21, they had reached an agreement with Mr. Nussbaum on behalf of the White House to allow Justice Department lawyers to look at the documents. I must tell you, as you recall, that that testimony was disputed by Mr. Nussbaum and the White House lawyers.

Mr. Heymann, Mr. Margolis, and Mr. Adams further testified that when they returned to the White House the next day at 10 a.m., to carry out this agreement, they were told by Mr. Nussbaum that the deal had changed, that he was no longer going to allow them to look at the documents, that the only arrangement he would permit to go forward was one in which they sat by while only White House personnel reviewed the documents in Mr. Foster's office.

We heard fairly bold testimony from Mr. Heymann concerning his calls in the moments and hours after that change in the agreement complaining about Mr. Nussbaum's having altered the terms of the arrangement the afternoon before.

So that naturally posed the question—why was there a change? Why was it that at 5 p.m., on July 21, Mr. Nussbaum was amenable to allowing the Department of Justice to look at the documents and a little more than 12 hours later, at 10 o'clock the following morning, that deal was changed. Naturally, the question suggested itself—was anybody beside Mr. Nussbaum involved in changing that arrangement?

Bearing in mind that this was going to be a central question in the hearing, at the very beginning of our preparation, both the Republican and Democratic staff agreed that document requests should go out to the White House and the White House agreed to act on behalf of individual White House officials in receiving these requests, seeking records of telephone conversations and other communications with certain individuals whose activities were at the very core of what the Committee was going to look at.

Those individuals included Maggie Williams, the Chief of Staff to the First Lady and they came to include Susan Thomases, who is an individual who has identified herself as a close friend and oft-times adviser to the First Lady and to the White House.

Accordingly, as early as June 2, a request went out to the White House for all records of telephone conversations or wire communications with designated individuals at the White House for a 48-hour period, beginning shortly after Mr. Foster died and ending at 5 p.m. on July 22, which was the day that Mr. Foster's office was ultimately entered and the documents were reviewed.

This was a very narrow window of time—48 hours. But it was of critical importance, we believe, for this Committee to have before it all of the telephone records showing the contacts made between the relevant actors, so that the Committee could determine whether someone beside Mr. Nussbaum was calling the shots or giving instructions concerning how to handle this agreement with Justice.

To make it even more clear, we followed up that letter on June 30 with an additional letter that was even more specific, although it by no means superceded the earlier letter. This more specific letter on June 30 directed the attention of the White House, in particular, to records of telephone conversations and wire communica-

tions that took place during these 48 hours from or to the First Lady, who at that time was at her mother's home in Little Rock.

In addition, we requested for this 48-hour period telephone records relating to the personal residences of Bernard Nussbaum, Margaret Williams, and Patsy Thomasson.

These requests were sent to the White House with the White House's representation to us that they would be happy to make sure the requests were directed to the appropriate responsible parties. That was on June 30.

We received a large number of telephone records during the following weeks, but we did not receive all of the telephone records. In light of that fact, on August 9, which I believe was the next-to-last day of the Committee's hearing over the summer, Members of the Majority raised the issue about whether subpoenas ought to be sent to telephone companies because it appeared that perhaps the individuals did not have access to telephone records and we should then take the step of pursuing the telephone companies.

Until that request was raised on August 9, we heard nothing from the White House about any difficulty that the witnesses were having in obtaining these records or that the White House itself was having in completing the production of the telephone records.

At that time, the Committee will recall, there was some further discussion and we agreed to defer the subpoenas to allow the individuals additional time to respond to our concerns.

Later that day, as it happens, we received letters from representatives of the First Family and representatives of Margaret Williams indicating that at that point they were now for the first time, evidently, prepared to go and get these records from the telephone company.

Wonder of wonders—it turns out that several weeks later, we received from lawyers for the First Family records, which I will detail shortly, relating to telephone conversations from the Rodham residence in Little Rock where the First Lady was staying during the relevant period of time.

We also received a letter from Margaret Williams' attorney, indicating that he had contacted the telephone company and that the records we requested no longer existed.

We then, with the concurrence of the Chairman and the Ranking Member, sent a subpoena to the telephone company. Once again, the records appear.

I don't want to suggest that the only records that were not provided to us were records of personal residences of individual witnesses because the White House itself continued to produce records to us after the hearings concluded.

Around Labor Day, we received records of an electronic message from the wire communications system within the White House, that in fact had a significant communication with Mr. Nussbaum which I will detail shortly.

On Friday the 13th of this last month, October, we received yet additional long-distance records from the White House that in fact have pertinent calls that relate to the subject matter of this last summer's hearings. It's worth looking at this last production for a moment to consider the fact that this production came literally months after our initial request for all telephone and wire commu-

nications with specified people in the White House to be provided to us. These were records which were in the possession of the White House because they were part of the White House long-distance system.

We have now received what I believe and hope are all the responsive records relating to last summer's hearings.

What is the importance of this? I don't know that we would have brought this to the Committee's attention if we were dealing with records that were irrelevant or immaterial. But it turns out that among the records that were furnished to us were critical calls occurring at critical time periods that were in fact the subject of intense questioning by Members of this Committee at several points during the summer.

For example, we received records from Margaret Williams relating to July 22, which was the date of the handling of the documents and the review of the documents in Mr. Foster's office, that showed communications between her and Mrs. Clinton in Little Rock, earlier in the day on the 22nd.

Yet, when Ms. Williams was here testifying, both in her deposition and under oath at the hearing, she was specifically asked about those conversations. Her response was, and I'm quoting here from a deposition that was taken in July, at pages 86 to 88, that she only remembered having one conversation in the evening with Mrs. Clinton on the 22nd. This issue was returned to again and again in the deposition and Ms. Williams identified only that single conversation late in the day.

Now, if we had these records, they may have been a very, very useful aid in refreshing Ms. Williams' recollection, if her recollection needed to be refreshed.

The records from Ms. Williams also disclosed telephone conversations in the wee hours of the morning following the night in which Ms. Williams and Ms. Thomasson and Mr. Nussbaum were in Mr. Foster's office after his death. You'll recall the testimony was that during a period of time late on the 20th, after Mr. Foster passed away, these three individuals spent some time in Mr. Foster's office.

Not surprisingly, the Committee asked pointed questions of Ms. Williams concerning the conversations or calls she had had when she returned home in the very early hours of the following day. Because we had a record of a call that was made between her and the First Lady, we got an answer from Ms. Williams relating to the substance of that telephone call.

She did not, however, tell us that she had spoken to Ms. Thomases immediately after hanging up the phone with Mrs. Clinton. To the contrary, again, in her deposition on July 7, her specific statement was that she recalled talking to Susan Thomases the next day, but that she did not talk to Susan Thomases in the early hours of the morning following her foray into Mr. Foster's office.

Yet, we now have with these additional records clear and convincing proof that after completing her phone call with Mrs. Clinton in the early hours of the morning, her very next action was to call Susan Thomases. Again, a useful item to refresh recollection.

Likewise, we discovered in the course of reviewing these documents that in the early hours of the morning on July 22, which

was the day the decision was made regarding the handling of Mr. Foster's documents, there was an early morning telephone call from Ms. Williams to the First Lady, followed almost immediately by a telephone call from the First Lady to Susan Thomases, which then was followed by a call from Susan Thomases to Bernie Nussbaum.

If we had these additional records showing the telephone calls that preceded the call from Ms. Thomases to Mr. Nussbaum, it would have put in dramatic perspective testimony which we had about why Mr. Nussbaum changed his mind on the morning of the 22nd concerning how to proceed with the documents. In fact, this was an issue that was pointedly raised with Ms. Thomases again and again. She was asked at the hearings——

Senator KERRY. Can I ask a question, Mr. Chairman?

The CHAIRMAN. No. I would like for counsel to finish, and I believe he will do so shortly. Then any questions from the Committee certainly would be appropriate.

Senator SARBANES. Can I inquire how much longer counsel intends to take?

Mr. CHERTOFF. I imagine 10 minute, perhaps.

Senator BOXER. Ten minutes more, in addition to the 15 you have done.

Senator KERRY. Mr. Chairman.

Senator SARBANES. To discuss this?

The CHAIRMAN. Pardon me?

Senator MURKOWSKI. Let's proceed.

Senator SARBANES. Ten minutes more to discuss this subject?

Mr. CHERTOFF. To complete my presentation.

The CHAIRMAN. I believe it's important that we lay the groundwork, and I propose that we issue subpoenas for those documents that the Committee believes are necessary to get the facts.

I said in my introductory remarks, which were maybe 4 minutes, that, to be quite candid, we have tried to cooperate. I do not for one moment question the sincerity and the bipartisan and highly professional relationship that we have established on this Committee, both as Committee Members and the staff.

But the fact is, that responses to our requests for documents have not been forthcoming. In some cases, it would lead reasonable people to believe that the responses have been at the very least disingenuous.

I am going to ask counsel to proceed and then you may ask him questions.

Senator DODD. Well, Mr. Chairman, just one inquiry. The language like wonder of wonders—I appreciate laying out what you want, but that's more than just giving us information. The language that's being used here is clearly, it's conclusionary in this way. Let's get away from that.

The CHAIRMAN. OK.

Counsel.

Senator KERRY. Mr. Chairman, just before he goes on.

The CHAIRMAN. Yes.

Senator KERRY. Is the White House Counsel here, or invited to be here?

The CHAIRMAN. The White House Counsel has had representatives present, and I am certain that there is somebody from the White House.

Senator KERRY. I'm just curious.

The CHAIRMAN. But the fact of the matter is that they have had representatives at all of the meetings. They certainly were aware. The White House put out this information yesterday.

I will tell you that we requested documents from Mr. Lindsey and didn't receive the documents until yesterday. They sent over—and this is only because I am absolutely convinced—these documents were supposed to be made available. We requested them September 8. They were due September 22. They came yesterday only because it became apparent that we were going to issue subpoenas. We said that we were going to issue subpoenas because we have really reached the point where if we're going to do our job we must pursue this, and not on the basis of who's going to exercise good faith.

Now let me make the record clear. I believe that every Member on this Committee, and the professional staff, have worked together cooperatively, have exercised good faith. But we have not had that same kind of response from various individuals inside and outside of the Government.

Senator SARBANES. Mr. Chairman, there are differing perceptions about that. Obviously, we need to develop those differing perceptions.

The CHAIRMAN. Sure. Yes.

Senator SARBANES. Because some of us feel that there has been an effort to be responsive, that this proceeding here represents a very marked departure from the way this Committee has conducted its business up to this point, and does not reflect the kind of consultation and cooperation which have marked our efforts heretofore and enabled it to be a bipartisan effort.

Now if you and your colleagues choose to take a different course, I can't control you from doing that. But I think it ought to be made very clear what's transpiring here.

Is Mr. Chertoff going to go on for 10 minutes on this subject, on the telephone calls?

The CHAIRMAN. No. In terms of laying out the document request—and of course, the telephone calls which are of some significance, bring this to a head. But there are literally dozens of occasions which we will go through expeditiously before I entertain a motion to issue subpoenas for all of the documents that we have already requested.

So I'm going to ask him to continue.

Senator SARBANES. Well, shouldn't we question on the telephone calls while he's on the telephone calls before he moves on to something else?

The CHAIRMAN. I have no problem with anybody asking counsel questions. But I want to conclude and I think he's going to conclude in an appropriate period of time and then he should be open to any questions that you might want to pose.

Senator MURKOWSKI. Let's proceed, Mr. Chairman.

The CHAIRMAN. Mr. Chertoff, you proceed.

Mr. CHERTOFF. Thank you, Mr. Chairman.

I hasten to add, I have no knowledge of the motivations or why things were not produced. What I am trying to establish here is that we're dealing with issues that had a real impact on the ability of this Committee to examine the questions that had to be examined. The chips fall where they may, but we need to make sure we have all the chips.

When Ms. Thomases was before the Committee, she was specifically pressed about why she called Mr. Nussbaum because, as the Committee will recall, there was testimony from one of Mr. Nussbaum's assistants that Mr. Nussbaum's change in the handling of the documents was motivated by concerns expressed by the First Lady and her friend, Susan Thomases.

Now we tried to test the accuracy of that testimony by Mr. Nussbaum's assistant.

Was there corroboration for Stephen Neuwirth's sworn testimony that he had heard from Mr. Nussbaum that the First Lady and Susan Thomases were concerned about the handling of the documents?

Had we had the records which we now have, which were the records of the call from Margaret Williams to the Rodham residence at 7:44 a.m., Eastern time, and 6:44 a.m., Little Rock time, had we had the record of the then-following call from the Rodham residence to Susan Thomases' hotel within a matter of minutes, and had we then had the record of the call from Susan Thomases' hotel to Bernie Nussbaum, in that context, within 1 minute after Mrs. Clinton got off the phone with Ms. Thomases, I think that would have been useful, not only in pressing Susan Thomases, but in establishing that in fact Mr. Neuwirth's testimony about who was concerned about the handling of the records on the morning of the 22nd of July, would have been very substantially corroborated by these records. The Committee would be free to accept or reject that inference, but it certainly would have been useful evidence and information.

Let me move to the next chart because there are some additional records that also would impact the consideration of these matters by the Committee.

We have prepared a summary timeline of records and testimony that was developed in the course of the hearing. As I have already indicated, the records that we received, after the hearings were concluded, certainly yielded an interesting perspective on the period of time before Ms. Thomases contacted Mr. Nussbaum in the 2 hours that preceded Mr. Nussbaum's apparent change in direction on the way he was going to handle the documents.

The Committee will recall that that was not the end of our consideration of the matter of the documents, that after Mr. Nussbaum at 10 o'clock told Mr. Margolis and Mr. Adams that he was going to change the deal, and that was their testimony, there were then conversations between Mr. Heymann and Mr. Nussbaum, where Mr. Heymann urged Mr. Nussbaum to reconsider.

We heard testimony that individuals in the White House discussed these matters over the ensuing hours. I believe Senator Mack raised the question of a series of telephone calls that occurred later that morning from Susan Thomases to the office of

Maggie Williams and to the office of Mack McLarty which occurred during the same timeframe as those discussions.

Now if we move to the next chart, as we follow the timeline, what you will see is that, again, in yellow are the additional records we have received since the hearing. What those records disclose is that there were further communications between Margaret Williams and Hillary Clinton's residence in Little Rock in the early afternoon, just before Mr. Nussbaum and the Justice Department people finally went into Mr. Foster's office to conduct the examination on Mr. Nussbaum's terms.

You will recall Mr. Nussbaum had told Mr. Heymann when they discussed it in the morning that he would think about it. He would consider Mr. Heymann's objections. Then we had testimony from Mr. Margolis and Mr. Adams that in the early afternoon, they finally got the word that Mr. Nussbaum was not going to change his mind and he was going to do it his way.

Bearing that in mind, it's critically important to observe that at 12:47 p.m., there was a page from the Rodham residence to Margaret Williams, followed almost immediately thereafter by a 1-minute call from Margaret Williams to the Rodham residence.

I should observe that when it's listed as Margaret Williams' residence, that means that the call turns up on her residential records from a phone card. It doesn't tell us that she was literally at her house when she made the call. It just tells us that she made the call using her personal calling card.

Another call from the White House to the Rodham residence then followed a half-hour later. One could draw the inference that that was Margaret Williams attempting once again to respond to that page.

Again, these records would have been critically important placed in context in helping us understand what discussions might have occurred that led to Mr. Nussbaum's position and in shedding light on Mr. Neuwirth's testimony about what he understood were the motivating concerns behind Mr. Nussbaum's decision about how to handle the documents.

Finally, if you follow the chronology, you will see that these additional records would have shed perhaps an interesting light upon the conversations later in the day when the documents were being moved from Mr. Foster's office up to the residence and there was evidence that Ms. Williams called Mrs. Clinton to talk about it in the late afternoon. That's followed by two conversations between Ms. Thomases and Ms. Williams, and Ms. Thomases and the First Lady.

So that puts into perspective one set of the records that we have now received.

There's one other set of records that I would like to talk about briefly before I conclude this portion of the discussion.

The Committee may recall that when the time came to move the documents up to the residence, an employee named Carolyn Huber who worked in the personal residential side of the White House, was the individual who was responsible for finding the location where the documents would be kept. She came here and she testified in fact that it was her understanding from Maggie Williams

that the First Lady wanted to have the documents put at a place in the residence.

Now, we had discovered earlier during the course of the investigation that at 6:48 p.m. in the evening, the night before the day the documents were moved, Mr. Nussbaum had paged on the internal message system Carolyn Huber. So, naturally, we wanted to pursue at the hearing with Ms. Huber whether she had responded to that page and perhaps had discussions with Mr. Nussbaum as early as the night before about making arrangements to move documents into the residence.

That again would have been a very important fact to be able to examine. In fact, we will put on the easel an excerpt from the testimony which was held in the hearing on August 3. You will see from the excerpt that we specifically asked Ms. Huber the following questions relating to whether she remembered getting paged by Bernie Nussbaum. She gave very unequivocal answers.

She indicated that she did not know that she had gotten paged by Mr. Nussbaum because she never wears her pager. So he could page me, but I wouldn't have known it. We asked, did you talk to Bernie Nussbaum. She answered, no, sir, I have never talked to him. You have never talked to Mr. Nussbaum? No.

Those were unequivocal denials of contact with Mr. Nussbaum. But among the records we received after Labor Day is this record. It is a message the following morning at approximately 10:30 a.m., from Carolyn Huber to Bernie Nussbaum, leaving her number.

One could draw the inference that, contrary to her recollection before the Committee, Ms. Huber had received the page and had, as one would normally do the following morning, returned the page. I am not saying what was in Ms. Huber's mind. But, again, I am suggesting that had we had these records available to refresh Ms. Huber's recollection, we might have made some significant progress in determining what her conducts were and what her discussions were.

Senator SARBANES. Are you asserting that Ms. Huber talked to Mr. Nussbaum and that her testimony is therefore false?

Mr. CHERTOFF. No. I am not in a position to, first of all, say what she remembered. I can't go beyond the record to indicate that it appears now she returned the page. What this does indicate, pretty strongly, Senator, is that she had received a message the night before, contrary to her testimony here, and then she did the normal thing, which is to return it the next day.

Senator SARBANES. Well, I don't know.

Senator KERRY. Is it possible that her pager was in the office and on, and that the pager received it, but she wasn't wearing it as she said?

Mr. CHERTOFF. That's possible. But——

Senator KERRY. So why do you assert what you asserted?

Mr. CHERTOFF. Because it's clear that she returned the message the following morning.

Senator KERRY. How do you know she returned it?

Mr. CHERTOFF. Well, she left her name on the record.

Senator BOXER. How do you know she left her name?

Mr. CHERTOFF. Senator, I can't try the case.

The CHAIRMAN. Let me say, I think the point is very clear. Had we had this evidence, we would have been in a position to pursue with the witness how it is that this may have taken place. Indeed, if Ms. Huber did not wear the pager and the pager was in her office, how it is that the following day she didn't recall attempting to return the call to Mr. Nussbaum.

Senator BOXER. Mr. Chairman, if I might.

The CHAIRMAN. So the point is not, nor does counsel attempt to testify or make the point, whether she did or did not make the call. But here we have evidence that would have been very useful to this Committee that unfortunately was withheld or not made available.

The fact is that I believe counsel will make a very compelling case for us going forward, and I would still hope in a bipartisan, professional manner, in the proper way, and that is to issue subpoenas. We can no longer rely upon so-called good-faith efforts to produce documents.

If indeed there are legitimate disputes concerning whether this Committee has jurisdiction, then we will permit the process to go forward and the courts will determine what is proper and what is not proper.

Counsel.

Senator BOXER. Mr. Chairman, if I just might. The point I am making is—I don't know. Maybe some of you don't have this happen. I do have people in my office return a phone call in my name. Now maybe you don't do that. That's fine. The point I am making is there's all this filibuster going on here. You would be a really good candidate for the Senate, I have to tell you, counsel, because you're going on and on. Is there any end to this presentation?

Senator MACK. Mr. Chairman, I think that's out of line.

Senator BOXER. Because it's very one-sided.

The CHAIRMAN. Well, all right. I am going to ask counsel to proceed for making the point in terms of whether we should vote to issue subpoenas.

Would you continue?

Senator MOSELEY-BRAUN. Mr. Chairman, can I ask you a question?

The CHAIRMAN. Certainly.

Senator MOSELEY-BRAUN. Is there any reason why we've gotten to the point of talking about issuing subpoenas before an invitation is made to the people from the White House to explain or to work through this discrepancy?

The CHAIRMAN. We have volumes of communications. Counsel will testify, and that's what I want him to layout for this Committee, our efforts to get responses in a reasonable timeframe.

I do not believe that it is reasonable for us to have waited as long as we have for some of the documents and to have a thousand pages shipped to this Committee yesterday from Mr. Lindsey the day before the word is out that we will continue no longer to conduct business this way.

Let me just make another observation.

I hope that we can wrap this up before we go out of session. I don't want to hold sessions in December or January to conclude our work.

Now, I don't think it serves a useful purpose if other Members want us to continue to drag this out. I can't believe that anybody really wants that. The only way we can meet our deadline is to move forward unhindered by what appears to have been intransigence in meeting legitimate requests in a responsible manner.

Senator KERRY. Mr. Chairman.

Senator MOSELEY-BRAUN. Mr. Chairman.

The CHAIRMAN. That's my conclusion. I may be wrong. Reasonable people may disagree.

Senator MOSELEY-BRAUN. You know, Chicago just cannot keep up with New York when it comes to cutting off somebody.

The CHAIRMAN. No.

Senator MOSELEY-BRAUN. But I'm going to try to make my point to you.

The CHAIRMAN. Go ahead. Certainly.

OPENING COMMENTS OF SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. I guess my question is why is it that we have gone to the point of subpoenas, a public hearing about what wasn't done and discussion about subpoenas, when no invitation is even made for the people to come from the White House and give their side of the story?

The CHAIRMAN. But there have been invitations.

Senator MOSELEY-BRAUN. They're not here today. Were they invited for today?

The CHAIRMAN. No.

Senator MOSELEY-BRAUN. They weren't invited today. Well, that is the point, isn't it?

Senator KERRY. Mr. Chairman.

OPENING COMMENTS OF SENATOR CONNIE MACK

Senator MACK. Speaking from the perspective of an individual who spent a fair amount of time trying to proceed with a series of questions about telephone calls. I can't remember who it was, but someone on the other side asked me if those phone calls were selected. I believe we responded, yes, we selected to make the points that we were trying to.

I didn't realize at the time that the selection was actually taking place down at the White House. To now say that we want to call the White House and ask them why they made the selection, I think is absolutely ridiculous, and I think we ought to move forward.

Senator KERRY. Mr. Chairman.

Senator SARBANES. That's just not factually correct.

Senator MOSELEY-BRAUN. That's not my question. I just wondered why they weren't invited.

Senator KERRY. Mr. Chairman.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, if we're going to try to develop a factual record here, it ought to be a correct record.

The fact is that the telephone records about which Mr. Chertoff is talking were obtained by joint action. Actually, the people went to the companies and asked them voluntarily to provide the

records. Except in one instance in which the company said a subpoena had to be issued, in which case the Chairman and I joined in issuing that subpoena. That was a rule of the phone company. They would not provide it to the individual voluntarily, or it was too dated, I think, to be done on that basis. It had to be done by subpoena.

So that no request was made prior to that to the phone companies or to people to get their phone company record, their personal phone company records.

The CHAIRMAN. Senator Shelby.

OPENING COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Mr. Chairman, I don't want to delay this. We have been through these hearings. First, we went through the first phase of the hearings in 1994. Then we went through them this summer.

I wish we had subpoenaed the records earlier. If we would have subpoenaed the records rather than say, well, will you cooperate with us, I think we would be farther along in these hearings.

I think the bottom line is what does the White House have to hide, if anything? If they don't have anything to hide, they shouldn't be up here objecting, having people to object, or to stall the issuing of subpoenas. I believe we're going to issue the subpoena. It's going to be sweeping. What's going to come out of it, we don't know. But we've got a good idea and we ought to listen to our counsel.

Senator KERRY. Mr. Chairman.

The CHAIRMAN. Senator Kerry.

OPENING COMMENTS OF SENATOR JOHN F. KERRY

Senator KERRY. I raised the original objection here and I haven't been able to get one word in since.

The CHAIRMAN. Go ahead, Senator.

Senator KERRY. I would like to come back, if I can.

My objection is not to the notion that some of this information is not legitimate or shouldn't have been provided. Or it might not even have helped somewhat in the line of questioning, conceivably, although I think Mr. Chertoff will admit that none of this is hardly of the level that Bernie Nussbaum would have laid back in his chair and put his arms up and said, I give up. Somehow it's different from the way I said it was. So I don't—this is not going to change the substance.

Even if you read what Ms. Huber said, she said here, I never wear my pager. So he could have paged me, but I wouldn't have known it.

Now, we then have this supposition that was drawn, a conclusion, frankly, suggesting otherwise. I think that that is what I at least feel is unfair in this context, that there are a series of conclusions being drawn, or postulations, allegations being made contrary to the testimony, and I don't think that's appropriate.

To the effect that there are legitimate questions that may have been raised, or that this might have enabled one Member of the Senate to ask a better series of questions, I think that's accurate.

I think that—what I hope is that we can get a bipartisan effort here that will agree that it's appropriate for this Committee to have some answers to the questions that we pose, and I think that's legitimate. But some of the language in the subpoenas at this point is requesting every single conversation that six people had on any subject. On any subject.

Now under any context, I don't understand how that isn't simply overbroad, a reach, sort of a fishing kind of expedition that I don't think does justice or dignity to this Committee.

I'm very prepared to join with the Chairman in getting information that we ought to have to do our job, and we ought to have it quickly.

My hope would be that we could join in a bipartisan way here that would engage with the White House Counsel to have a very specific finite list of those things that genuinely pertain to the work of this Committee, demand that it be provided within a short span of time, but not put the Committee in the position of dividing along party lines as to whether we're going to have to ratify what is on its face just an overbroad request.

Every single phone call made to anywhere from May to January? How can that conceivably be legitimate in the context of this and under all standards of lawyering, that is not what is required of an officer of the court on the other side in a fair response to a fair request for a nonfishing expedition.

So, Mr. Chairman, I would hope we could get the Committee back on a bipartisan and fair track here by trying to narrow down what is appropriate for us to all join together in demanding be provided forthwith, but not permit us to be divided along the lines of the overbreadth of the current request.

Senator MURKOWSKI. Mr. Chairman.

The CHAIRMAN. Senator Murkowski.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Mr. Chairman, I would like to know if it's your intent to allow the counsel to finish his presentation because, clearly, every Member obviously has a right to address his or her questions. But I think it should occur after you're finished. Otherwise, we're going to simply flounder around and have more statements and then more questions.

It would seem to me, Mr. Chairman, that that would be the best order of action, since you've already set that as an established procedure. Then I understand it's your intention to address the appropriateness of calling for action by the Committee on the question before us.

Senator DODD. Well, Frank, if you would just modify that a bit.

I think all Members might benefit as well from hearing from the counsel of the Minority. I think you ought to hear exactly the chronology of events here.

The CHAIRMAN. Senator Dodd, there certainly is no objection from the Chair to have Minority counsel because we have worked together. I think, again, counsels have worked very cooperatively, have sought this information and at no time has Mr. Ben-Veniste attempted to obstruct this. I want that to be clear.

Mr. BEN-VENISTE. Well, I hope, Mr. Chairman, I have done more than not obstruct.

The CHAIRMAN. I don't mean to be less than generous in terms of my praise of you. But remember, I can help you whether I say good things or bad things about you.

So you take whichever.

Mr. BEN-VENISTE. It depends on which camp that criticism or praise is received.

The CHAIRMAN. Yes.

Mr. BEN-VENISTE. But may I say, Mr. Chairman——

The CHAIRMAN. Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. We have gone through this thing, do subpoena, don't subpoena. It started in 1994.

Now if the White House Counsel, the two chairs there—there's no reason they can't be in them. But we have gone through this thing and we went through it to subpoena, not to subpoena.

I said before in the first hearing, it was like eating ice cream with a knitting needle to get anything out of the White House. Well, now it's reached the point of skinning a hippopotamus with a letter opener, and we still aren't getting anything. If we're going to, we just as well should issue the subpoenas and get on it.

Mr. BEN-VENISTE. Mr. Chairman, if I could put into context?

The CHAIRMAN. Mr. Ben-Veniste. Let me do this. I want Mr. Chertoff to finish his presentation and then you certainly can put those areas into context and make those observations.

Senator Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Yes, just putting things in context.

I think what is the concern is putting 2 and 2 together and coming up with 5. What should be said is the White House has given us 8,500 pages of information. Williams and Connolly, 25,000 pages from the law firm.

When the Majority counsel says that this would be a useful item to refresh recollection, I think he's probably absolutely correct. When you ask people what phone calls you made 2 years ago, understandably, people aren't going to know for sure.

Let me give you a very practical example from this morning.

A few of us on the Democratic side met briefly in Senator Sarbanes' office. Then, in the 3 minutes between that meeting and this meeting, I went to my office. There was a call from our Ambassador to Burundi. He has the President of Burundi here.

Now, somebody's going to put 2 and 2 together and figure out the President of Burundi is very much interested in all of this and we will issue a subpoena to the President of Burundi.

You know, I think we have to use some restraint in jumping to conclusions. So I simply urge some restraint here.

Senator DODD. If my colleague would yield just on that point, and I think it's important.

Senator SIMON. Yes.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. I think, again, the issue—I don't disagree with having as much information as you can get in order to run a line of questioning. But in fairness to these witnesses, the personal phone records were not requested until the end of the summer hearings. In every case they complied, except in the case of one company that requires subpoenas.

Mr. CHERTOFF. Mr. Chairman, may I? If I can complete that.

Senator SARBANES. Could I ask Mr. Chertoff how much longer he's going to go?

Mr. CHERTOFF. I'm drawing to a close. I have a couple of minutes left. I would like, if I may, to respond to some of the factual issues that have been raised because—

The CHAIRMAN. Let me—

Senator SARBANES. Well, if he's going to close in a couple of minutes, let him proceed.

The CHAIRMAN. We are not going to do that. We are not going to do that. Let me tell you what we are going to do, though. I think every Member has been heard or made some point. We are now going to have counsel conclude. Then if there are any questions, which there will be, that is fair and that is reasonable. Then we will entertain the question of voting on the issuance of subpoenas.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Having reviewed the context in which these records fall, and I emphasize, I'm not drawing conclusions, although conclusions could be drawn. What I'm saying is the Committee had a right to have this data.

I want to emphasize that, in fact, very specifically, these phone records were requested from the White House on June 30. It wasn't until August 9, when the issue of subpoenas was raised in the Committee, that some response was forthcoming.

After that, we then had some further difficulties in getting the records, including records that were within the White House's own possession, which were received only on October 13.

Let me finally observe that there are a couple of other reasons why we are recommending to the Committee that subpoenas be issued. The subpoenas would, of course, be geared to the letter requests which have gone out, which have as their foundation the original request of August 25, which asked for nothing more or less from the White House than all documents that are relevant to the subject matter of the Resolution which the Senate passed and under which the Committee operates.

So the original and most significant request is one that is directly tailored to the subject matter of this Committee's inquiry.

The remaining observation I would make is this. Commendably, in the last couple of weeks, a representative of the new Treasury Inspector General approached the Majority and the Minority staffs of the Committee to highlight certain issues she felt we ought to know about in terms of Treasury's production of documents.

What she indicated to us was that over the last week to 10 days, she had discovered or had learned that there was a significant amount of shredding of records that were related to the issue of the Inspector General's examination of Treasury–White House contacts that was going on at the Treasury Department. She said that she

had been told that the records being shredded were duplicates of records, although we observed to her that when one is doing a document production, duplicates are sometimes relevant, depending on which files they're located in.

That is a matter which the Treasury is going to continue to examine and I think we are going to examine ourselves to determine whether this shredding is something that is innocuous or is creating a problem for us.

But I think the problems that we have had in obtaining records for the last set of hearings, whatever the reason that we had the problem——

The CHAIRMAN. Counsel, I don't think you tied that up sufficiently. I think your point is that unless you issue a subpoena the removal of information will continue unabated.

Mr. CHERTOFF. That's right.

The CHAIRMAN. Regardless of all the good intent. I think you wanted to make that point.

Mr. CHERTOFF. The Chairman is right and the Chairman did it more succinctly than I could have done. Without a subpoena, we cannot absolutely protect against someone doing something inappropriate with the documents.

In terms of the specifics of what we propose to do with the subpoenas, if I could ask Mr. Giuffra just for a moment to outline very specifically the subpoenas that we are recommending that the Committee issue.

Senator SARBANES. Mr. Chairman, I think at this point we ought to now examine this telephone issue because he's now finished it.

The CHAIRMAN. If you want to get into the telephone issue——

Senator DODD. Absolutely.

The CHAIRMAN. I would ask one thing.

Senator MURKOWSKI. Is counsel finished?

The CHAIRMAN. I believe that counsel would like to lay this out so that we can wrap it all up, because it's not just a question of—we finally received the telephone records. We haven't gotten all the records that we requested.

But I think Mr. Giuffra should take 5 minutes to go through the list of things that we have asked for, the response, and what we will be requesting vis-à-vis the subpoena. Then I would open it up to questions.

Senator SARBANES. Well, why don't we pursue what Mr. Chertoff has laid out before we go to Mr. Giuffra, who is moving into a different area with respect to other requests?

The CHAIRMAN. Because it's going to encompass the request that we make. I'm going to ask the indulgence——

Senator DODD. Mr. Chairman.

The CHAIRMAN. Yes.

Senator DODD. There's a point here that's been made that documents were withheld by the White House. That is the assumption. That is just wrong and that needs to be challenged immediately.

The CHAIRMAN. OK.

Senator DODD. I think our counsel should be allowed to do this.

The CHAIRMAN. Let me do this. For the next 15 minutes, then, I will open it up for questions that you want to ask counsel relating to the documents.

But I can say that after reviewing the list of requests that have been made by this Committee, the vast majority jointly by the Minority and Majority, that have been unfulfilled, I have come to the conclusion that we can no longer continue to tolerate this nonresponsiveness, that we absolutely must do this for two reasons. Number 1, to protect the documents that we're requesting, otherwise, some may be inadvertently destroyed, misplaced, et cetera. Number 2, to give those who are conducting the investigation and the work of this Committee the opportunity to do their job in the proper manner.

I have to tell you, I have reached that conclusion recognizing that almost all of the documents that have been requested have been requested by the Committee jointly, in a bipartisan manner. The case is not that one side has asked for documents and the other side has objected. That's why I hope that we could have Mr. Giuffra lay that out and then open this whole matter up to questioning.

Senator SARBANES. Well, before we go to Mr. Giuffra, because I'm going to question him fairly closely because I spent last night reading over his letters and it's clear that he revised his own requests, recognizing they were too broad in a number of instances. I hope to have a chance to discuss that with him here today.

But before we proceed to that stage of the hearing, I think we ought to pursue the matters that Mr. Chertoff laid before us, if he's now concluded. I gather you have concluded.

Mr. CHERTOFF. I'm concluded.

The CHAIRMAN. Let me say for the record before we go, Senator Dodd had a question to ask, and we'll pursue that line.

Senator DODD. Let me turn to our counsel.

The CHAIRMAN. For the record, I would like to observe that a quorum has been established.

Senator DODD. Fine. Let me turn to our counsel, if I can, on this particular point.

The CHAIRMAN. Certainly. That is, to make observations or point. I don't want counsel questioning counsel.

But, certainly, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

I think we have to come back to the fundamental premise that was raised here. That is, whether, in connection with these phone records, documents were withheld by individuals or the White House. That was the statement in the opening remarks that caught my attention because that is contrary to my understanding of what occurred.

Requests for telephone records were made for last summer's hearings. It was not until the hearings were substantially along where it was deemed advisable to attempt to get the personal records of various individuals. That is, their home telephone records.

While a general request went out that may or may not have covered such records, the point that is important is when a request or even a subpoena is made for telephone records, that individual whose records are being sought has an obligation if they're going to fairly comply with the request to turn over those records which they have in their possession.

Nowhere is there any requirement, and I doubt that we would find one Federal prosecutor, as aggressive as he or she might be in the United States, who would suggest that a witness who is the subject of a subpoena has the duty to go out and go to his phone company for 2-year-old records and request that those phone company records be produced in response to either a subpoena or much less, a request for phone record documents.

In this case, the individuals who were the subject of that request in all cases responded in a helpful and conciliatory way to obtain from their phone companies the record which the phone companies had of these records, which were 2 years old by now.

If there is a suggestion that we have been misled or that evidence has been withheld, then that suggestion must encompass the notion that the individuals indeed had in their possession these phone records, Mr. Chairman, and did not turn them over.

I don't think Mr. Chertoff said that. If he has any evidence of that, that is news to me with respect to Ms. Williams, with respect to Mrs. Rodham in Arkansas, and with respect to Ms. Thomases.

The CHAIRMAN. Ms. Thomases.

Mr. BEN-VENISTE. In connection with records that she may have maintained.

In fact, each of those individuals requested of their phone companies that the records be produced. Two out of three phone companies acceded to that request. The third required a subpoena, which we jointly issued and obtained the records.

Now, if Mr. Chertoff had shared with me these elaborate charts, which I doubt were prepared only last night, before we would go forward with these hearings, I would have been able to observe to him that none of these records appear to have contradicted any of the testimony given by any of the witnesses.

Sometimes, when you come up with evidence later that is of an important quality, it is because those records are in direct contradiction to the testimony given. In the case of the particular records that we have here, it is my view, in reviewing the testimony here given, that there was no such contradiction as a result of the production of these records.

So we asked for the records. We got the records. The records simply emphasized that which we know already, that these communications had occurred and they are put into context, and I assume they will be set forth in the kind of way that Mr. Chertoff has expounded today in this Committee's report that will issue on those hearings.

I listened very carefully to what Mr. Chertoff said the purpose of our last hearings was. I have this habit of listening that I have gotten over 25 years or so of being a trial lawyer.

What Mr. Chertoff said, the purpose of the hearings were to determine whether there was an improper interference with Department of Justice procedures relating to the handling of Vincent Foster's papers. Indeed, our Resolution says we are charged with investigating whether improper conduct occurred regarding the way in which the White House officials handled documents in the Office of the Deputy Counsel, Vincent Foster. That's a big distinction.

The Department of Justice had no regular procedures. They were trying to do a job on an ad hoc basis. I believe Mr. Heymann on

down from the Department said that they had no right to come into Mr. Foster's office and to review his files, but that a procedure that they regarded as——

The CHAIRMAN. Mr. Ben-Veniste, I think now we are wandering off of the issue.

You made a good point as it relates to the issuance of the subpoena, the compliance, et cetera. But now when we get into making the distinction as it relates to whether or not the scope was the White House and whether the White House impeded or whether Justice impeded, I think now we're getting into an area called delay. So please try to make your point.

Mr. BEN-VENISTE. I will, Mr. Chairman.

The CHAIRMAN. OK.

Mr. BEN-VENISTE. Thank you. My point is this. That with respect to the issues that were front and center for this Committee, the records that have been produced are only of marginal interest. They have to do with whether various conversations occurred at various times. Not whether documents were destroyed or mis-handled or improperly handled.

Mr. Chairman, we have been quite willing and, indeed, as you know, of the 40 requests—and may I have the volume?

Mr. Chairman, this book represents a compendium of all of the document requests and answers. This is just our letter requests and the answers we have received with respect to the next series of hearings.

Senator DODD. Why don't you date that? That's August 18.

Mr. BEN-VENISTE. Between August 18 and now. This is a volume that would probably take an ordinary person a couple of days to read in and of itself. Of those requests, 40 in number, we have joined in 38, Mr. Chairman.

The CHAIRMAN. I made that point.

Mr. BEN-VENISTE. With respect to the White House requests, from the beginning, as the Chairman know, we have taken the position that the initial requests to the White House were overbroad and needed to be refined, that they were not the best that one could do in fashioning a request for documents.

We predicted at that time that unless we were to focus and prioritize our requests to the White House, that we would run into problems with delay or possible delay of our hearings and focus, and inability to comply in a timely basis.

Now, my observation of the process has been that the White House Counsel's Office has worked very diligently with the Committee in responding to requests, they have produced some 8,500 pages of documents up to this point and have indicated to us that they are still in the process, and indeed, Mr. Chertoff and I met with representatives of the White House as late as this week, to review materials which sort of parallel the procedure that we used last time, where there was material that was sensitive in nature, which was called for under the broad request that had been issued, but which was irrelevant to the issues that we are going to be investigating. They invited us to come in and look at those materials, anyway, to assure ourselves that the issue was a nonissue and that there should be no inference drawn from nonproduction of that material because it wasn't relevant.

I bring that up only because it is my observation that the White House has responded to a very, very difficult request in a professional manner and has continued to produce documents since they were first requested to, up until as late as yesterday. There are probably some 10 or 12 separate deliveries by the White House of documents.

Now other agencies have also had difficulty with respect to our requests. I think that we cannot say that there has been any untoward delay in responding.

There have been witnesses, however, including Ms. Lewis, who would be a very important witness for our next phase of hearings, it seems to me, who have indicated through counsel that they are unwilling to produce documents to us.

Mr. GIUFFRA. Mr. Ben-Veniste, that's not accurate.

Mr. BEN-VENISTE. Excuse me?

The CHAIRMAN. Well, I am not going to have counsel going back and forth. Mr. Giuffra, if you want to make an observation relating to the record, you'll be given that opportunity. So just make a note of that and then we'll return. I'm not going to open the door. Let's set the record straight now with regard to counsel going back and forth.

Go ahead.

Mr. BEN-VENISTE. The record will show that we have received communications from counsel for Ms. Lewis, who has indicated unwillingness to provide materials to us that we have asked for repeatedly. Now, it may be——

The CHAIRMAN. I'm going to make an observation at this point.

Mr. BEN-VENISTE. It may be the case——

The CHAIRMAN. I am going to now go to Mr. Giuffra and my observation is that we have gone beyond the area that Mr. Chertoff has raised. You have responded, and I think quite adequately, as it related to the questions of the telephone calls.

Now I would like to present——

Mr. BEN-VENISTE. May I address the shredding, Mr. Chairman? Senator Dodd. The shredding was raised, yes.

The CHAIRMAN. Well, all right. You want to respond to the issue of documents that may or may not be destroyed. I would like to narrow that to say that I certainly have no information that documents that are relevant may have been destroyed. But I think the point is illustrative that when certain documents which may or may not be relevant, are being shredded, one of the ways to protect against this is to issue subpoenas. That's the narrow point.

OPENING COMMENTS OF SENATOR BARBARA BOXER

Senator BOXER. Mr. Chairman. This is a very brief point that you cut counsel off on. I just want to make sure I have the answer, or at least pose the question.

The point I think he's making is that the Committee has worked together, Republicans and Democrats, to request a whole series of telephone records and other records.

Now there was a request to see phone records of Jean Lewis, who of course is one of the witnesses that your side says knows all, whatever. I didn't see any subpoena request for those. Perhaps they are in the package.

The CHAIRMAN. I believe there is in this request.

Senator BOXER. Subpoenaing Jean Lewis' home records are in the request?

Mr. CHERTOFF. Mr. Chairman, I think the position we're going to recommend is that from this point here on, all of our requests to everybody be by subpoena. We're not going to distinguish.

The CHAIRMAN. In other words, this won't be done on a selective basis so we won't subpoena one person but not another. Our recommendation is that, from this point on, to move this process and to deal with this in a more expeditious manner, we issue subpoenas to everyone.

This is not going to be——

Senator BOXER. Including if our side isn't getting information we want, say Ms. Lewis' home phone records.

Mr. CHERTOFF. Mr. Chairman, I believe counsel will agree. We have never declined to put into our requests information that counsel for the Minority wants, and we would be happy to.

The CHAIRMAN. If I might move ahead.

Mr. BEN-VENISTE. Could I address the shredding, Mr. Chairman.

The CHAIRMAN. If you would, and then I would like to return so that we can really get down to the basis, which is, and you touched on it, counsel. We have 40 requests that were made and 38 were made jointly.

Mr. BEN-VENISTE. That's correct.

The CHAIRMAN. I think that makes the point. There are approximately 18 that are either ongoing or have been nonresponsive, for one reason or the other. Some of these are agencies outside of the scope of the Federal Government. Some of these are individuals outside of the scope.

My recommendation is that we issue the necessary subpoenas either to require the production of these documents and/or people, if necessary.

But go ahead. You want to make your point on shredding.

Mr. BEN-VENISTE. With respect to the shredding, I don't believe, Mr. Chairman, that that ought to be considered a basis for taking action, other than we would normally take in the regular course of this Committee's business, for this reason.

I think Mr. Chertoff was careful not to suggest that there is any indication that the material which was the subject of this shredding, which I would want to emphasize has no connection whatsoever to anything that the White House is doing, so far as we know.

Mr. CHERTOFF. I don't think that's correct, actually, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Well, as far as the information we have received, that the individual or individuals who were involved in this were employees of the Treasury Department and not the White House, that this went on at the Treasury Department. It went on in a room that houses documents which has a shredder in it. We are advised that, at least preliminarily, that these were duplicate documents which may or may not have been appropriate for shredding using that shredder in the room that had the shredder.

So I don't know whether it is appropriate or inappropriate. We are certainly treating it in a serious manner vis-à-vis this information that's come to us.

We have scheduled depositions. Indeed, I think we had one for yesterday that was moved for some reason that I don't understand. But, in any event, we are pursuing the issue. But that ought to be at this point divorced from the consideration of whether subpoenas are either appropriate or necessary.

When I mentioned the 38 subpoenas that we have agreed with the Majority on, I think that really shines a bright light on the two that we couldn't agree on because we felt that they were overbroad and that they needed to be refined. Indeed, a process has evolved whereby there has been, in my view, a good faith dialog between this Committee and the White House with respect to that portion of the document production we have requested.

Senator DODD. Mr. Chairman, could I just make one comment?

Again, I think that's a very worthwhile thing to do. The danger in this, and what worries us, I think, on this side, having gone through, and I think we all agree, done an excellent job in trying to maintain this sense of balance here, the mere suggestion—it's out now—the mere suggestion that there's shredding going on, despite the fact that there's a machine in the room for that purpose, someone has come forward. It needs to be explored.

But we all here now know what's happened here this morning. For the most part, the public is going to report about shredding. Despite the fact that a month or two from now, we can find out, it's absolutely innocent. But nonetheless, a lot of people get damaged in the process when those suggestions are made. That's not the way we ought to do our business here. That's what worries us on this side.

Now, again, it's perfectly legitimate and absolutely, the depositions, immediately bring the people in, find out what went on. If someone shredded documents related to this thing, then the world ought to fall on them. But if it's the normal, just innocent course of business, then we ought to be able to draw that conclusion. Before we go public, bringing this stuff out, the damage has been done now. The damage is done. The news that it was nothing, we all know it's going to be on B-20. The headline will be tomorrow, Suspect Shredding. That's what it will be.

The CHAIRMAN. I doubt that.

Senator DODD. That's what worries us here.

The CHAIRMAN. I understand the Senator's point. That has not been this Committee's methodology.

Senator DODD. No, I know it hasn't been, Mr. Chairman. I know it hasn't been.

The CHAIRMAN. We're not going to get into this.

Senator Bennett wants to make a remark. Then I'm going to ask Mr. Giuffra to put forth before the Committee the outstanding requests, et cetera, wrap this up. Then you can ask him questions before we go to a vote.

Senator Bennett.

OPENING COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Mr. Chairman, I am interested in all the lawyering that's going on, having not been to law school.

I have a question that may be inappropriate, but I think some other lay people out there might want to ask. Are there any plans

to call Maggie Williams and Susan Thomases back to give them the opportunity to tell us what they now remember about these new phone calls?

I think that that would be a useful exercise for us to go through.

The CHAIRMAN. Well, Senator, let's look at this document first, and then we'll address that question.

Senator BENNETT. OK. Fine. Because I would like to have them come back and hear them say, yes, I forgot the phone call. Now that I see this, I remember what was said and we talked about this, that, or the other, because I think that would probably clear up a lot of this.

Senator DODD. Let me say to my colleague, I think that makes some sense, if you want to do that. The point is here, however, we draw so many conclusions about withholding evidence, shredding documents.

I think that's a legitimate point. You might want to find out—do you recall? It's not inconceivable. People are not going to remember every phone call. I think we all agree on that. I can't remember phone calls. If you said to me, go back last week, last month, let alone last year or 2 years ago, I would be hard pressed. I think most of us would be here, to have that kind of recollection.

But we have made a lot of suggestions here this morning that are going to be the subject of broad-based communications to the public. What we have done up to now, to the great credit of the Chairman and the Ranking Member on this Committee is to avoid that and to resolve those things that we can resolve without necessarily having to damage people's reputations.

The Chairman said it to begin with and I commend him tremendously for this, that it is dangerous. We have got people's reputations here. There's someone down whose name is now in the public domain about shredding documents.

The CHAIRMAN. I don't think there's any name.

Senator DODD. Well, it's out there some place.

The CHAIRMAN. No, I don't think so. There is no name.

I'm not aware——

Senator DODD. Mr. Chairman, you and I both know, by the time this day ends and tomorrow, it's going to be public.

The CHAIRMAN. Well, I would hope not.

Senator DODD. That's the point. You know what I'm saying.

The CHAIRMAN. All right. Sure, I do.

Senator DODD. That's the point I'm making. We're having a big public hearing this morning. All the cameras are here. All the press is covering all this stuff. We've got some allegations here that may amount to nothing. Absolutely nothing.

The CHAIRMAN. Well, I think we have indicated that. I think that, again, Mr. Chertoff went to great lengths to attempt to indicate that there may or may not be any significance as it relates to that particular event.

I think the fact is, though, that subpoenas do have the ability to preserve evidence or potential evidence that may be significant.

Senator DODD. Mr. Chairman, I agree with you. But why does he bring it up here in a public hearing? There's a way for us to do this. We have been doing it for 2 years together.

The CHAIRMAN. OK. I think we are and I think we maybe paid too much attention to that area. I don't think that the media is excited about that.

Senator BENNETT. In any event, Mr. Chairman, Senator Dodd and I would both like to have Maggie Williams and Susan Thomases come back.

The CHAIRMAN. We'll entertain that.

Senator DODD. It makes sense.

The CHAIRMAN. Mr. Giuffra.

Senator SARBANES. Mr. Chairman.

The CHAIRMAN. Yes, Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I want to make two observations before we go to Mr. Giuffra. I'm looking forward to hearing from Mr. Giuffra.

The first is I agree with what Senator Dodd said about the shredding. But I want to underscore that it's a matter that needs to be looked into and looked into very carefully and very promptly. I think it's very important that the staff, both Majority and Minority staff, undertake to do that.

Until all the facts are established, we need to treat it as a serious matter. It may prove to be absolutely nothing. I gather there have been preliminary reports indicating that it may have only been duplicate copies. But we need to check that out. I'm very strongly supportive of any effort to check it out.

Now on the telephone conversations, I think it's important to note that these telephone records which were discussed here this morning were obtained as a consequence of the joint action of the Majority and the Minority.

Toward the close of the hearings, it was suggested, well, why don't we get the personal home phone records of certain people? We undertook to do that.

The people whose home phone records we wanted in fact indicated to the Committee that they would be happy to comply voluntarily and made the effort themselves to do so. In every instance except one, they were able to do so. In that one instance, it was because of the rule of the telephone company and not because of the individual's shortcomings that a subpoena was issued in order to obtain the records.

The phone company, as I understand it, in that instance said, well, we won't provide these records unless it's done in response to a subpoena. Upon receiving that information, the Chairman and I joined together in issuing a subpoena to that phone company.

So we got those records. I think it's important to underscore it was obtained jointly.

Now, we are going to turn to Mr. Giuffra, who is going to talk about his efforts to get material from the White House, I assume.

Mr. GIUFFRA. Senator, what I was first going to do was correct the record with regard to Jean Lewis.

Senator SARBANES. Well, all right.

Mr. GIUFFRA. Mr. Ben-Veniste indicated that there had been some problem in obtaining documents from Ms. Lewis. In fact, the record quite clearly makes clear that that's not the case.

On October 17, 1995, a letter was sent which was signed by both Chairman D'Amato and yourself to Michael Forshay, who is Ms.

Lewis' counsel. That letter asked Ms. Lewis to produce a series of documents, and the request mirrored the request that we also sent to the White House and all of the other agencies. There was no magic to it. That request is not returnable, meaning the documents are not due until October 27, 1995, which is 2 days hence.

So I think that before we say that Ms. Lewis has not produced records, we ought to give her a chance to comply with this request in 2 days.

The second point I would make about the request that was sent to Ms. Lewis is that that request expressly asks for, and I say, quote, "Home telephone records reflecting any and all long-distance telephone calls to Area Code 202, 212, or 501, for the period, August through December, 1992, and August through December 1993."

I think Members of the Committee have seen the proposed requests we put forward with regard to telephone records. They are no less burdensome than this. In fact, this is a broader request to Ms. Lewis than to any of the other entities that we have discussed sending subpoenas to.

Senator SARBANES. I'm looking at this letter from Forshay, where he says, as I have previously discussed with Mr. Giuffra, I must respectfully object. This is a letter to me and Senator D'Amato. I must respectfully object to the scope of your request for records as being overly broad.

Mr. GIUFFRA. Our response to his letter, Senator, was to send this request.

Senator SARBANES. No, no, no. You sent the request. This letter is dated October 24. Your request was on October 17, if I'm not mistaken. Isn't that correct?

Mr. GIUFFRA. That's correct, Senator.

Senator SARBANES. On October 24, Chairman D'Amato and I received a letter from Forshay, in the course of which he says—As I have previously discussed with Mr. Giuffra, I must respectfully object to the scope of your request for records as being overly broad. Then he goes on to detail that.

Mr. GIUFFRA. The procedure will now be to get a subpoena. Then if he wishes to object to the subpoena, a court will decide that.

Senator SARBANES. The preliminary question is whether it's appropriate to issue the subpoena. This will be a relevant question with all in terms of whether the request itself is reasonable.

The CHAIRMAN. That is correct.

Senator SARBANES. In other words, I differ with the Chairman. I think there's been an effort on the part of the White House to be responsive. I thought the initial request made to the White House was overly broad and in fact would slow down the Committee's efforts, not speed them up.

I think the Giuffra letters, which I assume we are now going to go to the White House, have compounded that problem. I look forward to the opportunity of developing that point.

Let me also say, Mr. Chairman, just before I cease so we can turn to Mr. Giuffra, I want to underscore the departure that has taken place here this morning in terms of how this Committee conducts its business.

Now the Majority may choose to, as it were, play a different game and, in a sense, my perception is to highly politicize this activity, and I regret that.

We have tried hard to work together in a cooperative way. On occasions, we have disagreed, but we have tried to resolve those differences and tried to conduct a thorough, balanced, and careful inquiry. In fact, the Resolution under which we were created requires consultation.

Now this meeting is a clear departure from that. There was no consultation about this meeting. Nor was there any consultation about the subject matter of this meeting. In fact, we weren't even given any inkling of the subject matter until late yesterday, late yesterday afternoon. The Majority now asserts that there's a problem with document production by the Administration.

I think a careful reading of the record would indicate that the Administration has been trying very hard to comply with requests for documents, but it's been overwhelmed by shifting requests and by the amount of them. I do not accept the assertion that the Administration is being intentionally dilatory in this matter. I don't think that that begins to be fair.

They have perceived problems in some of the requests. They have tried to sharpen them up. Actually, as a consequence of that procedure, I think a better focus has been given to the documents that are requested.

I'm advised that the White House Counsel has now written to Mr. Giuffra, a letter of October 23, which I hope all Members have and have had a chance to review. If we're going to move now to some important decisions, I hope Members have had a chance to look at that letter to Mr. Giuffra from Jane Sherbourne. It says: "Although your October 17 letter raises new issues that require further discussion, we anticipate we will have essentially completed our response to it by October 30. To date, we have produced nearly 8,500 pages of White House records to the Committee."

She then goes on to elaborate the difficulties they have had in trying to respond. Mr. Giuffra keeps sending down these 4-page letters every few days. Now I know how he spends his time, sort of elaborating further requests. I'm going to, after he finishes, point out how some of these requests were clearly too broad. In fact, so broad, that even Mr. Giuffra himself had to recognize the fact.

Mr. GIUFFRA. Senator, if I could just begin.

Since August 25, 1995, the Special Committee has sent document requests to 40 Government agencies and individuals and as has been noted here today, 38 of those requests have been signed by both Majority and Minority. Those requests, in fact, fill up the binder that's even thicker than the one that Mr. Ben-Veniste waved up.

Now those requests are listed on page 3 and 4 of the memorandum which the Members of the Committee have before them today. Those requests included a request to the Arkansas Development Finance Authority, the Department of Justice, Webster Hubbell, President and Mrs. Clinton, Dan Lasater, Betsy Wright, who is the custodian for certain Clinton campaign records, the White House, Whitewater's former president, a man named Charles James, and a number of other people.

We list in this document, on pages 3 and 4, which the Committee has before it, the status of those requests. Nineteen of the requests still have not been acted on or have been fully complied with. We further identify on pages 5 and 6 of the memorandum certain problems that we have had.

Those include, for example, Mr. James, the former president of Whitewater and Whitewater's accountant. Although the documents were due on October 30, nothing has been produced to the Committee.

We had requested the documents from Mr. Lindsey, who the Chairman noted earlier, on September 8. We only received documents from him yesterday in anticipation of this hearing.

Yolley Redden, who is Whitewater's accountant. We requested documents back in September. We have not received anything from her.

Betsy Wright was supposed to produce documents to the Committee on September 22. We still have not received any documents from Ms. Wright.

There are other deficiencies in the productions of the White House that are set forth in this memorandum that we have provided to the Committee.

The Chairman asked me several days ago to ascertain from the Senate legal counsel why we might need to get subpoenas. I obtained an opinion which is dated October 23, 1995, from Mr. Griffith, in which he indicates, and I'll just read from the opinion:

A failure by Executive Branch agency or official to discharge its legal obligation to respond to a legitimate Congressional request for information may not be redressed by any enforcement mechanism.

Then he goes on to say:

Issuance of a Congressional subpoena imposes upon the recipient a legal obligation either to comply or to describe the legal basis for not doing so.

Now, with regard to the White House, which appears to be the focus here, I would make the following points.

One, the Committee sent a document request to the White House on August 25. That was 2 months ago. The White House production is still not complete.

In my view, it has been more difficult to obtain documents from the White House than from any other Government agency or individual. Now that's not a view that only I share, but a view that the General Accounting Office also shared yesterday when it complained at the Travelgate hearing about the difficulty of obtaining documents from the White House.

Mr. Michael Shaheen of the Department of Justice also complained yesterday at the same hearing about the difficulty of obtaining documents from the White House.

I have also spoken with House Banking Committee Counsel which is investigating Whitewater. They have advised me of similar difficulties in obtaining documents from the White House.

Now, the Committee has been forced with regard to the White House to engage in far more voluminous correspondence than with any other agency. This has been very time-consuming. I would contrast the level of cooperation we have received from the White House with the level of cooperation we have received from the De-

partment of Justice, which has been very, very cooperative and forthcoming. There is no paper trail of extensive correspondence.

Now——

Senator SARBANES. Does the Department of Justice response stop at the time of Fiske's appointment?

Mr. GIUFFRA. I believe that's accurate, sir.

Senator SARBANES. That's correct. What's the date of that?

Mr. GIUFFRA. I believe that's January 20, 1994.

Senator SARBANES. So the time period is quite different.

Mr. GIUFFRA. In part. But the Resolution asks the Committee, as you all know, to look into matters that occurred at the White House as late as August 5, 1994, with regard to the handling of the IG transcripts, and whether those transcripts were misused by the White House Counsel to tailor testimony that was put before this Committee back in the summer of 1994.

Senator SARBANES. Is the Department of Justice response fully in?

Mr. GIUFFRA. It is not yet fully in, although the Department of Justice has been very cooperative in terms of producing a very, very thick log, which is more than an inch thick, specifying various documents that the Independent Counsel wished the Department of Justice not to produce because the production of those documents might hinder or impede the Independent Counsel's investigation.

We have engaged in a very, very constructive dialog with both the Department of Justice and the Independent Counsel about the production of those documents.

Senator SARBANES. Well, we're having a great deal of difficulty with the Independent Counsel, in my perception.

We have tried, Mr. Chairman. For instance, we have a request for Steve Irons to be a witness because Mr. Irons headed up the FBI's White Collar Crime Unit in Little Rock at the time the RTC sent criminal referrals to the FBI. He can provide critical information about the RTC's and the FBI's handling of the referrals. This is the Jean Lewis matter, and he can provide an important perspective from the FBI's point of view.

We're having great difficulty getting Mr. Irons as a witness. Although what we would ask him to testify about are things prior to the work he's now doing for the Independent Counsel.

The CHAIRMAN. I believe that underscores the need for subpoenas, whether it be Jean Lewis, whether it be Mr. Irons, whether it be records that come out of the White House or Arkansas or wherever. I think it is important that we have the ability to get better compliance. It seems to me that this will put us in a position—there's no doubt that some questions still will arise, and Jean Lewis' attorney may believe feels the subpoena that we're going to issue is too broad.

In this case, we may have to negotiate or go to court and find out if it's too broad. Or it might mean that we'll vote for a more limited subpoena.

But I think you underscore very correctly, why we probably should have undertaken this course of action and the Committee, I think, could have been more effective sooner rather than at this

time. But better now than never, if we're ever going to complete the task that we have been assigned.

Senator SARBANES. Well, that underscores the importance of consulting, in order to decide in which instances the subpoena ought to be issued and what the subpoena should say. Obviously, the Committee will create problems for itself if the request is overly broad, if we don't define and focus it. That's one of the problems that has occurred thus far.

The CHAIRMAN. I would point out to my friend and colleague that it would appear that in at least 38 out of these 40 matters, that we have joined together, both Majority and Minority counsel, in requesting this information.

So, whether it's White House Counsel at this point in time or anybody else who says, well, it's overly broad, that really doesn't matter because Majority and Minority have come to an agreement that this information is necessary and is being requested in a proper manner.

Senator SARBANES. I didn't sign the one to the White House. I thought that was too broad. I think Mr. Giuffra's letters subsequently have only amply demonstrated and compounded that point. I think that's very clear.

The CHAIRMAN. Well, let me——

Senator SARBANES. Now signing a letter request to others is different from the question that's posed whether to issue a subpoena. There, you need to define, it seems to me, what you're seeking with some specificity and you need to really lay it out in a way that the people receiving the subpoena know what they're being asked for.

That's a process that requires a considerable amount of good lawyer work. As I said, I'm happy to engage in that process. But we certainly have not been in a consultative mode up to this point. I take it from what the Chairman says, he doesn't intend to be in such a mode. That's why I made the comment at the outset that the workings of this Committee have taken a very sharp departure from past practice.

The CHAIRMAN. I don't believe that is the case. But here is what I propose to do now. I am going to ask that the Committee be empowered to issue subpoenas to all Government agencies and individuals to whom the Committee has directed document requests since August 25, 1995. The subpoenas will demand production by November 1, 1995, of all documents sought by outstanding requests in any subsequent clarifying letters sent by the Committee's counsel.

Now, I will also make the aside that that would leave open the opportunity for our counsels again to work in a cooperative manner, and I would expect them to do that, so that where there is a question of the subpoena being overly broad, I would hope that we could again arrive at consensus as we have had. But I am going to move that.

Senator KERRY. Can I understand again the precise breadth of what you've now proposed, Mr. Chairman?

The CHAIRMAN. Yes. Basically, with regard to all of those documents that we have requested, that now subpoenas be issued for them and, indeed, that still will leave open the opportunity for our counsels——

Senator KERRY. When you say, "have been requested," are we encompassing all of Mr. Giuffra's letters?

The CHAIRMAN. I think there is a list which has been provided which encompasses——

Senator KERRY. Can we just quickly review that?

The CHAIRMAN. Yes, that's some 42 items. Mr. Giuffra, what page is that?

Mr. GIUFFRA. There are 40 different outstanding document requests. Those are specified on pages 3 and 4 of the memorandum which Mr. Chertoff and I sent to Members of the Committee.

Senator DODD. Haven't some been complied with, I mean, the requests for information?

Mr. GIUFFRA. That is true with regard to about half.

Senator DODD. Well, why are we going to go back and go through subpoenas with stuff we have?

Mr. CHERTOFF. What it does, Senator, is it means that everybody who has produced doesn't have to produce again. But basically, they put their representation behind it that they have complied with the subpoena. What that means is if someone has not produced something, now they face penalties, as opposed to simply waving our finger at them. That's what it is.

Senator SARBANES. Well, I think before you reach that stage, we ought to go through a consultative process to carefully define the subpoenas. Now let me give you an example.

Mr. Giuffra, in a letter of September 6 to the White House, it said they wanted any communications, contact, or meeting between the President, Mrs. Clinton, or any present or former member of the White House staff, and any present or former employee of the RTC. Then he goes on to list another 36 people in addition, including Senator Fulbright, now deceased. So he was asking for any communication between the President and Mrs. Clinton and Senator Fulbright, between January 20, 1993, and August 5, 1994.

Now, on the staff to the RTC request, following discussions with the White House Counsel, Mr. Giuffra finally on September 25 sends a letter and says, as you requested, the Committee will limit the present and former RTC employees specified in paragraph 3(d)(2) of my September 6 letter to the following. The September 6 letter was all RTC employees, every single one of them. All of them. Then they were limited here to 20 present or former employees of the RTC.

I haven't checked out the 20, as to whether they make a reasonable list, but obviously, that's a more reasonable approach than any communication with anybody in the RTC.

With regard to the persons specified in 3(d)(1) of my September 6 letter—this is former White House—present or former members of the White House staff, and then it enumerates eight such members. Now, that's an example of a request that was put which was overly broad, clearly, by any standard, which finally, after discussing it and working it out, even Mr. Giuffra himself recognized that that was the case.

That's the problem with issuing blanket subpoenas in the context in which we now find ourselves, particularly given this letter that's come from White House Counsel 2 days ago, I guess, the one I

made reference to, Mr. Chairman which I said I hoped every Member of the Committee would make sure that they had read it.

Senator DODD. Well, I just want to say, I think it's in the same context. If you go to October 17, which is just a few days ago, you have a letter sent to Mr. Fine and Ms. Sherbourne. It quotes in that request from Mr. Giuffra, any communications, contact, or meeting between April 1, 1993 and May 3, 1993 and August 1, 1993 and September 30, 1993, involving Erskine Bowles, President Clinton, Mrs. Clinton, Bruce Lindsey, Mack McLarty, Bernie Nussbaum, and Margaret Williams, relating to any subject. Now that's October 17.

Then you go on and you add, after having made that request, the Special Committee agrees to the proposal, except add for the following—add to the list, Lisa Caputo, Debra Coil, Lloyd Cutler, Carolyn Huber, William Kennedy—

Then you're turning around today and saying, well, they're not complying.

Any subject matter?

Mr. CHERTOFF. Mr. Chairman.

Senator DODD. Any subject matter?

Mr. CHERTOFF. Mr. Chairman.

Senator DODD. In seriousness here, the Committee—Mr. Chairman, I don't know of anyone—

Mr. CHERTOFF. Mr. Chairman, it's difficult to respond to a lot of these at once.

Let me say, though, with respect to what Senator Sarbanes raised, if you look at the letter of September 6, what it does is it works off of our basic initial request of August 25. That request was very straightforward. We asked for any documents that are relevant to the subject matter of the Resolution.

I will tell the Committee that all over this country, as we sit here now, lawyers are writing and responding to subpoenas or requests for documents that are drafted exactly the same way.

Senator KERRY. Correct. But that pertained to the authority of the Committee. What Senator Dodd just read goes way beyond the authority of the Committee.

Senator DODD. President and Mrs. Clinton, any subject matter?

Mr. CHERTOFF. Senator—

Senator KERRY. Can I make a suggestion, Mr. Chairman?

Senator BOXER. We want to know what they did on their anniversary.

Senator KERRY. Mr. Chairman.

The CHAIRMAN. Yes. Senator Kerry.

Senator KERRY. Mr. Chairman, as I said earlier, I think we're prepared to vote for what's reasonable. I'm certainly prepared to require any entity that pertains to this investigation to own up documents important to it.

But I don't think we're going to be able to write a subpoena in open committee like this. I would really like to recommend on a short time scale that counsel sit together and see if we can, again, as I reiterate what I said earlier, bring the whole Committee together in agreement on what has not been produced, what has been produced, what is now subject to an appropriate subpoena to the Committee. Let's draft it, be able to look at it before we come

here, and vote as a Committee unified on what we ought to be demanding.

Senator BOXER. Mr. Chairman, may I say something that backs this up?

Senator KERRY. Mr. Chairman, I move that.

Senator BOXER. I would second that.

I just want to ask you a question because I'm not an attorney, which sometimes puts me at an advantage and sometimes at a disadvantage.

As I understand it, looking at your 40 issues here, it says, White-water Special Committee, document request, phase 2, if you could look at that. I have some questions.

As I read this and look at the status, 17 of the 40, Mr. Chairman, have been complied with.

The CHAIRMAN. That's correct.

Senator BOXER. Are complete. Well, it seems to me a little foolish for us to subpoena documents which have already been sent in to this Committee and the record is complete.

As I understand it, another nine are incomplete or ongoing. For example, you have Ms. Lewis. We have asked her for some documents. You list her as ongoing. Well, that's encouraging to me. Maybe she's going to turn over her——

The CHAIRMAN. Well, if I could——

Senator BOXER. If I could just finish my point, Mr. Chairman because I am coming to a close very quickly here.

So we have nine where we're working together and it looks like there are five where you've gotten nothing, five that you've gotten nothing.

I want to just second the Senator from Massachusetts here.

I am perfectly willing if people aren't cooperating with this Committee, be it the Republican side or the Democratic side, to be tough. But where you have a situation where 17 of these have already been complied with completely, another nine are incomplete, but they're ongoing, I would rather hone in on those five.

Mr. Chairman, I think we have an opportunity here to work together. I hope that we can go along with the Senator from Massachusetts's motion. I think it is fair. It is good. It shows confidence in our Chairman and our Ranking Member to come to some agreement, rather than turn this into a political witchhunt.

The CHAIRMAN. I would ask before we go forward, and Senator Faircloth has asked to make a statement, I would ask my colleague to withhold his motion, which has been seconded, but he has a right to go forward on it, and propose that we go forward as outlined by counsel to issue subpoenas in these matters that have been laid before the Committee, the 40-plus that have been laid before.

I'm going to ask that a copy of those materials be submitted as if read in their entirety. Mr. Giuffra will take it out, give it to the Clerk so that they are included in the record as if read in its entirety.

Senator DODD. Mr. Chairman.

The CHAIRMAN. Now, if I might finish.

Senator DODD. OK.

The CHAIRMAN. It would be my hope that we would support the issuance of these subpoenas. It would be my instruction to counsel to see if, on a cooperative basis, recognizing that 38 out of the 40 document requests, counsels have made those requests jointly, that in that spirit, that our counsels work and they determine whether or not if there's an objection to the subpoena first before it goes out, they see if they can't work it out.

If, indeed, there is an objection that comes from various attorneys who represent various individuals and/or governmental bodies, that they determine whether they wish to press forward or to limit the scope of the subpoena.

That is the ordinary course of operation. I would propose that we undertake it in that manner. The Chairman assures the Members of this Committee that that would be the *modus operandi*.

Now——

Senator SARBANES. Well, Mr. Chairman——

The CHAIRMAN. If I might just conclude my observation as it relates to an issue. It is not a great issue, but it is one that has been raised by the Senator from California, Senator Boxer, as it relates to issuing subpoenas.

It is technical in nature to those people who have already replied and responded. Indeed, their response may have been in total or it may not have been. But this now, under the force of law, requires them—there may be some, and we don't make allegations as to who they are. They may be individuals outside of Government who have not fully complied. So that's why we do that.

Senator BOXER. Yes, but Mr. Chairman, your own staff says that 17 of these have been complied with and they are complete. I would think they would get a thank you letter rather than a subpoena.

The CHAIRMAN. Well, the problem is, and for the learned counsel behind to chortle, they should know better, the problem is that they may or may not have.

Senator BOXER. Well, your staff says they're complete.

The CHAIRMAN. No.

Senator KERRY. Mr. Chairman.

The CHAIRMAN. To the best of our knowledge, without the force of law. We have no way of determining whether they have or haven't. There are no sanctions for those people who indicate, for example, that they may have complied and indeed, they haven't.

This Committee is without legal power to bring upon any sanctions for people who have not complied, but who have told us that they have turned over all the records. So what this does is simply complete that legal requirement and it holds people accountable for acting in a reasonable, responsible way to this Committee.

Senator SARBANES. Mr. Chairman, what you're doing is you're putting the cart before the horse. Now Senator Kerry's right.

The CHAIRMAN. We have waited a long time. I'll entertain it——

Senator SARBANES. No. What should happen is we ought to have a process of reviewing what's come in, narrowing it down, and then determining if there's going to be a subpoena and what the subpoena shall cover.

Senator SHELBY. Mr. Chairman.

Senator SARBANES. Now you're apparently going to ask for blanket subpoenas.

The CHAIRMAN. Yes.

Senator SARBANES. That would encompass the breadth and depth of the land. That's no way to do business.

The CHAIRMAN. Now obviously, those subpoenas would be issued pursuant to the scope that the Congress has given us. Obviously, if we went beyond, people would not respond and the courts would quash those subpoenas. People would move.

Senator Shelby.

Senator DODD. I just want to make one observation. As I said earlier, this is the danger of meeting together and doing this.

Let me just share with my colleagues here what the lead is from the Associated Press for this hearing: "Preparing to issue subpoenas, the Republican-led Senate Whitewater Committee today accused the Clinton Administration of shredding documents and withholding telephone records. The Committee Majority Counsel disclosed that the Treasury Department has shredded some records relating to Whitewater context."

It goes on: "Chertoff said there was 'significant shredding of records.'"

That's what's wrong. That's what's exactly wrong with this, Mr. Chairman. I know that's not your intent. But as I predicted would be the case.

The CHAIRMAN. Well, I hope it wasn't the intent.

Senator DODD. This is where it breaks down.

Senator SARBANES. Yes. Senator Dodd predicted it a lot better than you did, Mr. Chairman.

Senator KERRY. This goes to the conclusions that were being drawn in the description earlier.

Senator DODD. That's just unfair. That's really unfair to people, as the Chairman is stating. But that's the headline. So, people's reputations get destroyed in the process and that's wrong. That's what this Committee has tried to avoid doing.

The CHAIRMAN. We have avoided it. We will continue to avoid it. But the central issue is whether or not we're going to go forward by way of legal subpoena.

Senator KERRY. Mr. Chairman, can I come back—

The CHAIRMAN. Senator Shelby.

Senator SHELBY. Mr. Chairman, we have talked about this a lot. We need to move on.

I will move to table the Dodd motion.

Senator DODD. I didn't make a motion.

Senator BOXER. It's the Kerry motion.

The CHAIRMAN. Senator Kerry's.

Senator SHELBY. Whoever it is.

Senator KERRY. Will the gentleman withhold, because if he doesn't, I'll come right back with 25 other motions and object to our meeting here because—

Senator SHELBY. It sounds like a threat to me, Mr. Chairman.

Senator KERRY. I would like to have an opportunity to have this Committee conduct its business openly and intelligently without trying to shut off people.

Senator SHELBY. We would also like for you to cooperate and not go ahead and delay and obstruct, just what you're doing.

Senator BOXER. The Kerry motion is a motion of cooperation, yes.

Senator KERRY. Can I speak for myself, please?

I would like to just say, Mr. Chairman——

The CHAIRMAN. Yes.

Senator KERRY. I'm prepared to vote for subpoenas.

The CHAIRMAN. Good.

Senator KERRY. But, Mr. Chairman, I'm not prepared to vote for an open-ended, undescribed, unread subpoena.

I don't know how you can sit here and ask us as responsible people voting on a legal issue like this to vote for a blanket subpoena without even having read it. I would like to see this subpoena. This is extraordinary to me.

Mr. CHERTOFF. Mr. Chairman.

Senator KERRY. I would like to—I am prepared to vote for what is not produced. I am not prepared to vote for a witchhunt or a politically motivated effort to embarrass.

Now this Committee has a very specific, legally binding authority. We ought to ask for anything that we ought to get so the American people know the truth within that legally binding authority. I'm prepared to vote for that, Mr. Chairman. But we don't have that in front of us.

Why is it so difficult? Why is it so much to ask for counsel to sit together for a few hours, put this down in writing and let us look at the breadth of what we will vote on?

I'm confident you'll have a unanimous Committee vote. Instead of reading a headline that talks about a divided Committee split along party lines, playing into everybody's cynicism about what we can get done in Washington, we could have a unanimous vote that is appropriate to the parameters of this Committee's investigation. Why is that asking too much?

The CHAIRMAN. Counsel.

Mr. CHERTOFF. Mr. Chairman, let me say first of all that we had indicated for counsel for the Minority, who I think may not be here right now. That is, Mr. Ben-Veniste may not be. Several days ago, that what we were going to be interested in seeking at the hearing was a subpoena for any outstanding document requests that had been issued on or after August 25.

All those requests fell within the scope of what the Committee's mandate was because the basic requests were all contained in an initial letter that was sent to every single recipient of a document request that said, give us the documents that are relevant to the following subjects, and quoted verbatim.

Now there are a subset of those where we were requested to come back with either clarification or change. For example, the letter of September 6 requested us to identify specific individuals who might have responsive records, as opposed to the entire White House.

If you read the letter carefully, the Senators will see that the letter incorporates by reference the basic limitation of the initial request. The subject matter has to be relevant to the scope of the hearings and simply within that subject matters. The letter defines it to include but not be limited to communications between certain people. So in those instances, the September 6 request, actually narrowed the August 25 request. It didn't expand it or change it.

These requests are all part of the record. Counsel has had those.

Senator KERRY. Mr. Chertoff, can I just ask you? I have a memo here that talks about all long-distance telephone records for all calls from the White House to Area Code 501. Is that within the parameters of this subpoena?

Mr. CHERTOFF. If the Senator will direct me to which particular document.

Senator KERRY. Well, it's in a memo that you delivered to all Members of the Whitewater Special Committee and staff, delivered yesterday, I might add. I got this memo yesterday afternoon. It's page 2, point A. It says, long-distance telephone records for all calls from the White House to Area Code 501, from May through November.

Now, for the life of me, I am certainly willing to subpoena any calls that have to do with the specifics of the investigation. But how do you have all calls? How do all calls fit under that definition?

Mr. CHERTOFF. Senator, I should point out, this particular list is not an outstanding document request.

Senator KERRY. Well, this is the list that I have to operate on a subpoena today. That's the entire State of Arkansas. You want calls for the entire State of Arkansas from the White House for 5 months?

Mr. CHERTOFF. I don't know what the Area Code 501 encompasses.

Senator DODD. It's the entire State. You ought to know that before you put it in a subpoena.

Mr. CHERTOFF. What I do know, Senator, is that it encompasses Little Rock.

Senator KERRY. Mr. Chertoff—Mr. Chairman, this is precisely what I am getting at. You're asking me to vote——

The CHAIRMAN. No, I understand what you're saying. But let counsel—in fairness to counsel—complete his answer because it's not that we're subpoenaing over, there's a request to subpoena all calls.

Senator BOXER. It is.

Senator DODD. Yes, the entire State.

Mr. CHERTOFF. Mr. Chairman.

Senator KERRY. Mr. Chairman, I am just reading from his language in this memo.

The CHAIRMAN. Well, I'm going to ask now that counsel respond.

Senator KERRY. What's the response?

Mr. CHERTOFF. The purpose of this request, which requests all calls to the Little Rock Area Code for the specified period is to determine what contacts there may have been that bear upon this Committee's study of the issue of the handling of the referrals in Little Rock and corresponding activities that occurred at the White House and the Department of Justice. That is the matter we're examining.

Whether in fact it's going to bear fruit or not, I don't know. Now if there are particular limitations when we serve the subpoena that the recipient of the subpoena wants to come back with—for example, a category of calls that are obviously outside the scope, obviously are personal, we'll be happy to deal with those as we——

Senator SARBANES. Why don't you exclude them from the subpoena in the first instance and draw a proper subpoena, instead of making these blanket requests for time periods running about 7 months? You have home long-distance telephone calls, and then we run through about a dozen individuals here? Any long-distance phone calls. Why don't you exclude out of your subpoena request and focus it and direct it toward the calls that would be relevant to the inquiry?

Mr. CHERTOFF. Because, Senator, we cannot identify at the start of investigating something necessarily who all the individuals are who may be involved.

Senator KERRY. Yes, but Mr. Chertoff, you know from legal practice that a proper subpoena, that is an overbroad subpoena, that that would be challenged——

Mr. CHERTOFF. I must tell you, Senator, that in my experience, subpoenas for sets of records, complete sets of telephone records from an individual or an institution are extremely common. They are rarely limited to subject matter. Sometimes they are limited to particular recipients. But I can cite hundreds of times when Grand Jury subpoenas have been issued where you want every phone record of a given institution or a given individual for a period of months.

Now with respect to these requests, I don't think we have an objection or a difficulty fine-tuning these said requests.

Senator KERRY. Why would you not make a request for telephone calls to officials of Madison, to the residence, to the Rose Law Firm, to whatever series of things clearly have a hook to this? Why do you need 5 million citizens of Arkansas telephone records conceivably responding? I don't understand that.

Mr. CHERTOFF. Senator, because there are literally hundreds of people whose names have come up in the context of this investigation. There are individuals at Madison. There are individuals at a host of other entities and institutions.

I suppose in theory we could list all those people and someone would then have to go out and examine their phone records and see how they meshed with the phone records of the White House.

Senator KERRY. You are suggesting there are at this point, with respect to the parameters as defined by the Resolution of the Senate, literally hundreds of people?

Mr. CHERTOFF. I am, Senator. I am suggesting that the number of institutions that are involved in such things as, for example, the issue of the Madison, the way the Madison money was handled, where there must be somewhere between half a dozen and a dozen institutions where the money is moving.

Or where you get to the issue of ATVA and Dan Lasater, where you get to Capital Management and you look at all the individuals who are either subjects of or witnesses involved in those investigations during the time period where we are examining whether the White House or the Justice Department in Washington was having conversations with the prosecutors in the field.

It is extraordinarily difficult to come up with a comprehensive list.

Senator KERRY. Let me ask you another question because I am just reading a letter from the White House here to you, or to Mr.

Giuffra. This was dated October 24, in which they say—and apparently they have explained this to you. This is just on electronic mail.

As we have previously explained, restoring and searching for electronic mail stored on back-up tapes is extremely burdensome and expensive. As an example, to restore and retrieve the electronic mail provided to the Special Committee in connection with its hearings last summer, cost approximately \$23,000, including the cost of nearly 400 hours of staff and contractor time.

Your current request is much more extensive than the request we satisfied last summer requiring the restoration of data spanning 13, as opposed to two, separate sets of back-up tapes.

We have received requests for electronic mail in connection with a number of investigations. We have determined that responding to these requests is feasible only if we hire contract workers dedicated to the project and lease equipment in an outside facility.

In order to respond, we need to explore with you how to pay for the cost of restoring and retrieving the electronic mail requested. Our technical staff estimates that the cost to retrieve your request as currently stated would be approximately \$125,000. This estimate is necessarily rough. The cost may vary significantly based on the availability of an appropriate facility and the amount of contractor time needed. The staff estimates that the work could be completed in approximately 12 weeks, plus lead time to procure the use of an outside facility.

Then they say, please let us know how you would like to proceed.

Mr. CHERTOFF. Senator, I am glad you brought that up.

Senator KERRY. Who's going to pay for that?

Mr. CHERTOFF. That's a perfect example of what we are talking about. We requested this in late August or early September. It is now October 25 and we get an objection for the first time in writing based on cost.

The Senator will remember that in the hearings over the summer, E-mails turned out to be——

Senator DODD. Did they object earlier to you?

Mr. CHERTOFF. They objected in principle. They didn't come up with a submission.

Senator DODD. Well, all right. So they got the letter yesterday. But you've heard about the objections for several weeks.

Mr. CHERTOFF. They have objected from the beginning to turning over E-mails.

Senator SARBANES. You have been in ongoing discussions, haven't you?

Mr. CHERTOFF. That is exactly——

Senator SARBANES. Have you not been in ongoing discussions?

Mr. CHERTOFF. Well, they have raised the issue.

Senator SARBANES. All right.

Mr. CHERTOFF. They have not presented us with the bill.

But the point is this, Senator, that from last summer's hearings, this Committee is well aware that E-mails provide very significant evidence. Again, I have to say, Senator, all over the country, people get requests and subpoenas for E-mails and they comply with them.

Every other agency we have requested E-mails from has complied and provided us with E-mails. This is the only recipient of a request that has said to us, we can't do it. It's too expensive.

The Committee could decide it's not interested in the relevant facts, but I think these are important.

Senator KERRY. Mr. Chairman.

Senator DODD. Mr. Chairman, can I make a suggestion?

The CHAIRMAN. I am going to make a suggestion.

Senator DODD. Just one suggestion, Mr. Chairman.

The CHAIRMAN. Go ahead.

Senator DODD. This is not healthy, what we're doing here with the Committee. I would like to make a suggestion, Mr. Chairman, that this Committee stand in adjournment, that the counsels get together, that our respective Members get together. Let's see if we can't get on track here. This is not healthy for the future workings of the Committee here.

Now, good points have been raised here. Unfortunately, some other ones that I have mentioned already.

I think it's in the interest of this Full Committee that has conducted itself pretty well that we not go forward with any motions. I would ask my colleague from Massachusetts to withhold his.

Let's sit down and see if there isn't some way we can resolve this, address these subpoenas that have been raised here this morning, do it in a good way. I think that's a better way for us to go. We get into party lines, votes here. This does not help this process. It speaks for more trouble down the road here.

There's a way of doing this and let's see if we can't do it that way rather than getting involved in votes in the Committee on this particular matter. I don't think it serves anyone's interest to go that way.

The CHAIRMAN. Senator Faircloth is going to be presiding in the Chair and he's asked to make a statement.

Senator Faircloth.

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Certainly, we want to simplify it. As we have all said, we want to move on. But we have new information and we certainly know that there was a triangle that operated at the White House. The triangle was Ms. Clinton, Maggie Williams, and Susan Thomases.

Now, this group went into action the night of Mr. Foster's death, when Maggie Williams went to his office. We know that she spoke three times with the First Lady that night. We know that Susan Thomases and Maggie Williams talked at 1 a.m. that morning. Yet, when they were here, they testified neither one remembered the call. I find it hard to believe because 1 a.m. calls, you usually remember. At least I don't get that many of them.

Mr. Chairman, the same triangle went into action again the day Mr. Foster's office was to be searched by the Park Police and the Justice Department. Maggie Williams called Hillary Clinton at 6:45 a.m., Little Rock time. Ms. Clinton then called Susan Thomases. Susan Thomases then called Bernie Nussbaum. Suddenly, the deal was off. The Park Police and the Justice Department weren't going to be allowed to search Mr. Foster's office.

Mr. Neuwirth was telling the truth when he said that Susan Thomases told Bernie Nussbaum that Hillary Clinton did not want unfettered access to Vince Foster's office.

It's clear what has taken place here. Whatever Maggie Williams didn't get out of Vince Foster's office on the night of his death, the First Lady did not want discovered by the Justice Department 2 days later.

Now, Mr. Chairman, today, I understand we are going to call Maggie Williams and Susan Thomases back before the Committee to testify about the new calls and they will be subpoenaed. We hope it will make their memory better. But I think to cut through it and get to where we ought to be, the key member of the triangle is Ms. Clinton. She hasn't testified before this Committee and the Committee hasn't called her.

During the summer hearings, I requested that the First Lady appear before the Committee. Now we have even more proof of her involvement and control over the situation.

Now if there is a question, then we should clear it up.

But we could add Ms. Clinton to the subpoena list. But I think out of certainly courtesy to the First Lady, that we should invite her to come here, with all due respect to the First Lady, and give her an opportunity to tell her side of the story, to tell what went on in these conversations. Press conferences don't do it.

But she needs to be here under oath to tell us what happened. It might be that her memory is much better than Maggie Williams' or Susan Thomases'. But the only way we're going to find out, the only way we're going to get to the bottom of it is to ask her to come before the Committee as First Lady and testify and tell us what happened, and that will cut through so much of the persiflage we have been going through today.

Mr. Chairman, I hope that we will invite her to come.

Thank you.

Senator BOXER. Mr. Chairman, may I say something?

Senator KERRY. Mr. Chairman.

Senator BOXER. Mr. Chairman.

The CHAIRMAN. No. Please.

Senator BOXER. Well, Mr. Chairman, I think—

The CHAIRMAN. Please. If I might. I have given every Member, and I am going to continue to give every Member the widest latitude.

First of all, let me say that, in a spirit that has been put forth as a recommendation or suggestion from both Senator Dodd, Senator Kerry and, to a certain extent, Senator Sarbanes, I am considering recessing to tomorrow morning at 9:30, instructing our counsels, our respective counsels, to go over the subpoenas that will be issued, recognizing that November 2 would be the date that those subpoenas would be made returnable by, because we're now dumping into time constraints. Asking them to narrow their concerns and differences. They have in 38 out of 40 cases heretofore.

It seems to me that we should be able to work that out.

Again, the issuance of subpoenas as a methodology of moving forward is not because the Minority has been dilatory or anything less than helpful. Let's understand that. That has not been the case.

There are others who the Chair feels have not been as forthcoming with information or with respect to responding to our requests.

So, I see it as the only way in which we can really do the business that has been assigned to us, without assessing blame or anything else. I think it's a constructive suggestion and if those of you share that and want to make an attempt to do that, I would make that in the form of—the next thing that I'm going to do is move to recess until 9:30 tomorrow morning.

We will meet here at 9:30 a.m. Hopefully, the counsels will have worked. There's going to be a lot of work. But I'm going to say to them that we will have to have come to a conclusion. If we can't conclude it, then, we'll vote it. But I would hope that we could vote as we have heretofore, in a very unified—

Senator BOXER. Mr. Chairman.

Senator SARBANES. Mr. Chairman, when do you propose to start the hearings, if I could ask?

The CHAIRMAN. There's the question, I think, as it relates—

Senator SARBANES. November 6. Is that correct? November 7?

The CHAIRMAN. Well, one of the areas that we will consider is the—I think it would be November 2, is when we would start the hearings.

One of the questions is as it relates to Susan Thomases and bringing her back. Maggie Williams, I think. There's almost been unanimity as it reflects that.

It seems to me we have to finish that aspect up before we can get into the other areas that we are now working on.

We have some very real time constraints here if we're going to do our job thoroughly and fairly.

Senator BOXER. Mr. Chairman.

Senator SARBANES. I would like to suggest that counsel take into account this letter of October 23 from White House Counsel.

The CHAIRMAN. Well, obviously, everything will be taken—

Senator SARBANES. Indicating that by October 30, they could essentially complete the response. That ought to weigh into any evaluation of subpoenas and what the subpoenas would provide.

The CHAIRMAN. Again, I am reluctant to preclude this Committee from giving it and its counsels the authority to move when it deems appropriate. I am not opposed to seeing to it that we limit, where we can, where practical, the scope. We have stuck to the scope. We're going to continue to do that.

So why don't we leave it to counsel? I am entertaining those suggestions made by my colleagues, and let's see if counsel can't limit it. But we will reconvene at 9:30 tomorrow.

Senator BOXER. Mr. Chairman.

Senator SARBANES. Then I think counsel ought to meet with White House Counsel and see whether that can be worked out.

The CHAIRMAN. Well, that would be part of the process.

Senator SARBANES. OK. Good.

The CHAIRMAN. Again, I don't want to begin getting accusatory. But I could tell you that I think that when we get into areas like the E-mail—first of all, I think it's a nonsense thing that we get Bruce Lindsey's 1,000 pages delivered yesterday. I have to tell you, that's not cooperation.

As counsel says, I make an observation and I have attempted to keep this within—I think they can do better. Now maybe they need to force, and I believe it is the force of understanding that you can't just put it off to another day or another time. I am not suggesting they're not busy. But we have our responsibilities. By gosh, we've got to get it done. Appropriately and correctly and without, as Senator Dodd and others have said, without unnecessarily hurting people and their careers by implying, whether deliberately or not, that they may have been involved in some kind of activity that is less than honorable.

We don't want to do that, and we haven't been doing that.

Senator SARBANES. I take it once we begin the hearings, that we will then continue—I mean, so Members can plan their schedule—we will then continue them through the month of November. Is that right?

The CHAIRMAN. I would hope to move them right on through and complete them as expeditiously as possible.

Senator SARBANES. What will the subject matter of the hearings be? Will we have an opportunity to consult on that rather important question?

The CHAIRMAN. Absolutely. We have and we will continue to and I know that our counsels, as they are, are already working on examining numbers of witnesses, doing depositions. They were taking depositions yesterday, the day before, et cetera, and I know they will continue to do this.

Senator BOXER. Mr. Chairman.

Senator SHELBY. Mr. Chairman.

The CHAIRMAN. Senator Shelby and then Senator Boxer.

Senator SHELBY. Mr. Chairman, I think we have made some progress here this morning. I hope that by tomorrow we can make the second step and the big step. But whatever we do, whatever we do here, I hope we'll not put a bridle on counsel. We have hired counsel and we've got good counsel on both sides. But to hold them back from what we're trying to get at—and what are we trying to get at?

We're trying to fill in some puzzles. There are a lot of unanswered questions up here. Maybe these phone lots will help us do this. Maybe calling back these other witnesses will help us do this. But we owe that to ourselves, both sides of the aisle.

Senator BOXER. Mr. Chairman.

The CHAIRMAN. I agree.

Yes, Senator Boxer.

Senator BOXER. Mr. Chairman, I want to commend you for moving the Committee in what I think is the appropriate direction today.

Very briefly, I would like to make a couple of points. I think Senator Kerry, Dodd, and others have pointed out that when you look at this list of phone calls—and I would quote counsel. He said, we don't know if they'll bear fruit. Well, you know, we've got to be looking at things in a little more narrow way than that because God knows what we could find out if we subpoenaed everybody's home phone records in the entire country. It could bear fruit.

The point is, obviously, we need to move expeditiously, not hold anyone back, but not turn this into something other than what it was meant to be, and we have a Resolution that guides us.

I would like to recommend to my colleagues that when you go over this list of phone numbers and you start to narrow it, you notice the fact that Jean Lewis' was not on this list. I think it's a very important point that if we're going to go and find the truth, that we not be one-sided about it. I would just like to close with this.

Senator Faircloth painted this triangle—Hillary Clinton, Maggie Williams, and Susan Thomases, this triangle of women, I might say. I want to say something.

If you didn't talk to your chief of staff three times a day, I'm telling you, you're not doing your job. You might well talk to your best friend when a tragedy strikes.

If I said that I had conversations with my best friend in California and my chief of staff three or four times a day, I don't think that should be projected as some evil triangle. If I said Senator Faircloth and his chief of staff and his best friend from North Carolina talked, it wouldn't indicate anything. So I just want to put out there that this kind of painting a picture of some sinister thing because people talk to their staff is outrageous.

I am sorry that Senator Faircloth isn't here. He's my friend. We talk about these things. But I just felt that he was overreaching in his comments.

Senator DODD. To some triangle going on there?

Senator BOXER. A triangle. I want to commend you, Mr. Chairman, for taking this in what I think is a far better direction.

The CHAIRMAN. I would like to before we recess until tomorrow, again suggest to the media that they should not overreact to today's discussion as it related to shredding because that was just illustrative of a potential problem that we deal with, whether it's shredding or not producing documents, et cetera, where there is no subpoena required.

The point is, and it may be technical in nature, that there can appear to be complete cooperation and indeed it not be the case, and there's no penalty for not cooperating, where documents that have been requested are not subpoenaed. That's why the technical point of putting forth those subpoenas even where there would appear to have been full and total cooperation.

If there is no further comment, then, I will say that we will stand in recess until 9:30 a.m. tomorrow.

It is the intent of the Chair to vote for the issuance of subpoenas. The scope, and I will bring that forth immediately—the scope of that is something that I would hope the counsels would be able to work out together.

We stand in recess until 9:30 a.m. tomorrow.

[Whereupon, at 1 p.m., the Committee was recessed, to reconvene at 9:30 a.m., on Thursday, October 26, 1995.]

[Appendix supplied for the record follows:]

7/27/93 5:29 PM	19930727	17:29	COUNSEL	BENJAMIN HUSSBAUM	GRACE LIZ	12/21/510 7516
7/27/93 7:45 PM	19930727	19:45	COUNSEL	BENJAMIN HUSSBAUM	HUSSBAUM MARTIN	
7/27/93 7:00 PM	19930727	19:00	COUNSEL	BENJAMIN HUSSBAUM	JORDAN VERNON	12/21/807 3360
7/27/93 7:59 PM	19930727	19:59	MARLENE	BENJAMIN HUSSBAUM	EDWARDS JOHN	12/21/232 2729
7/27/93 8:00 PM	19930727	20:00	MARLENE	BENJAMIN HUSSBAUM	PAUL SHELCOH	12/21/870 8090
7/27/93 10:24 AM	19930727	10:24	BETSY	BENJAMIN HUSSBAUM	WILKINSON JOEY	12/21/223 7311
7/27/93 10:30 AM	19930727	10:30	COUNSEL	BENJAMIN HUSSBAUM	HUBER CAROLYN	12/21/456 2957
7/27/93 08:45 AM	19930727	08:45	DEBORAH	BENJAMIN HUSSBAUM	HUSSBAUM MARTIN	(416) 382 3434
7/27/93 10:32 AM	19930727	10:32	DEBORAH	BENJAMIN HUSSBAUM	LUSH CLAUDE	(212) 691 9543
7/27/93 10:35 AM	19930727	10:35	COUNSEL	BENJAMIN HUSSBAUM	HOLZMANN ELIZABETH	(212) 669 3500
7/27/93 08:55 AM	19930727	08:55	PAM	BENJAMIN HUSSBAUM	SACK ROBERT	(212) 231 8210
7/27/93 09:00 AM	19930727	09:00	PAM	BENJAMIN HUSSBAUM	METENGAH SEANOR	12/21/224 8901
7/27/93 10:39 AM	19930727	10:39	BETSY	BENJAMIN HUSSBAUM	HUSSBAUM MOLLY	(212) 989 5478
7/27/93 12:15 PM	19930727	12:15	MARLENE	BENJAMIN HUSSBAUM	DOOLSTEIN FRED	12/21/595 5810
7/27/93 11:42 PM	19930727	12:42	COUNSEL	BENJAMIN HUSSBAUM	PHOENIX HOUSE FOUNDATION	

REDACTED

7/27/93 8:25 PM	19930727	18:25	DEBORAH	BENJAMIN HUSSBAUM	SLOAN CLIFF	12/21/456 6788
7/27/93 7:05 PM	19930727	19:05	DEBORAH	BENJAMIN HUSSBAUM	HEUWORTH STEVE	12/21/458 6216
7/28/93 8:00 PM	19930728	18:00	TOM	BENJAMIN HUSSBAUM	BLAVEN RITA	12/21/457 1188



Z 001231

CAROLYN G. HUBER**August 3, 1995 Hearings (pp. 17-18)**

Q: Let me ask you one last question, Ms. Huber. We have a record that indicates late in the evening before, on the 21st, the Wednesday, you got paged by Bernie Nussbaum. Do you remember getting that page?

A: No, because I do not wear a pager. I never wear my pager. So he could page me, but I wouldn't have known it.

Q: Did you talk to Bernie Nussbaum?

A: No, sir, I have never talked to him.

Q: You have never talked to Mr. Nussbaum?

A: No.

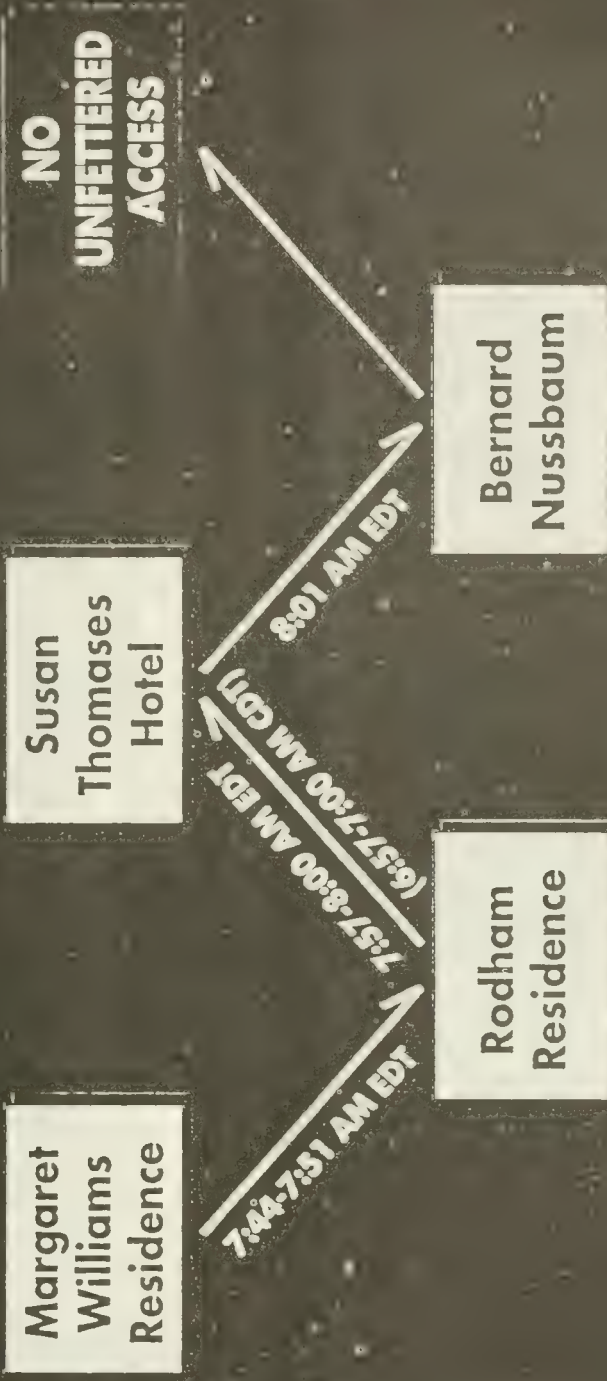
Q: Do you know where Mr. Nussbaum tried to reach you by page the previous day?

A: No, sir.

Q: Do you know whether on the previous day Mr. Nussbaum was trying to reach you to make his own arrangements to move any records up to the residence?

A: No, sir.

Early Morning Phone Calls July 22, 1993



The Review of Documents in Vincent Foster's Office

TIME	FROM	TO
July 21, 1993:		
Approx. 5:00 p.m.	Bernard Nussbaum agrees with Philip Heymann and David Margolls that senior Justice Department officials and Nussbaum will conduct a joint review of documents in Foster's office at 10:00 a.m. on July 22.	
July 22, 1993:		
7:44 - 7:51 a.m.	Margaret Williams Residence	Rodham Residence
7:57 - 8:00 a.m.	Rodham Residence	Susan Thomases Hotel
8:01 a.m. (pager)	Susan Thomases Hotel	Bernard Nussbaum
9:00 a.m. (message)	Susan Thomases	Margaret Williams
Approx. 10:00 a.m.	Nussbaum reneges on the agreement allowing Justice Department officials to review documents in Foster's office.	
Morning	Nussbaum advises Stephen Neuwirth that the First Lady and Susan Thomases are concerned about law-enforcement officials having "unfettered access" to documents in Foster's office.	

The Review of Documents in Vincent Foster's Office

TIME	FROM	TO
July 22, 1993:		
Late Morning	Senior White House officials meet to discuss the upcoming review of documents in Foster's office.	
10:48 - 11:54 a.m.	Susan Thomas calls the office of the Chief of Staff, Thomas McLarty, three times and the office of the Chief of Staff to the First Lady, Margaret Williams, three times.	
12:47 p.m. (pager)	Rodham Residence (Capricia)	Margaret Williams
12:55 - 12:56 p.m.	Margaret Williams Residence	Rodham Residence
1:25 - 1:31 p.m.	White House	Rodham Residence
Approx. 1:15 - 2:00 p.m.	Nusebaum describes documents in Foster's office, but does not allow law enforcement officials to review any documents.	
Approx. 3:30 - 4:30 p.m.	Nusebaum and Williams conduct a second review of documents in Foster's office and segregate Clinton personal files.	
Approx. 4:30 - 5:00 p.m.	Williams calls Mrs. Clinton and transfers Clinton personal files to the Residence.	
5:15 - 5:22 p.m.	Susan Thomas	Margaret Williams
7:12 - 7:13 p.m.	Susan Thomas	Rodham Residence

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

EXECUTIVE SESSION—SUBPOENAS

THURSDAY, OCTOBER 26, 1995

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE THE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
*Washington, DC.***

The Committee met at 10:05 a.m., in room SH-216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato, (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will reconvene. A quorum exists.

At the suggestion yesterday of a number of my colleagues, we had counsel working into the morning. At about 1 a.m., we came up with a resolve of some of the differences.

That resolve will—and we will furnish the specifics—but it has resulted in an agreement that we will issue 40 subpoenas for various documents; that an additional 9 will be issued for various telephone calls and records that have been made; and a methodology for handling that information has been worked out so that, as it relates to privacy issues, individuals will have their individual rights protected.

Regarding two outstanding issues, we have agreed to withhold at this time requests for the notes of President and Mrs. Clinton's interviews with the Independent Counsel. We will look for opinions from counsel regarding these votes. I have made it very clear, though, that we reserve the right to seek that information. So that is a matter that we are withholding at this time.

The other open issue regards subpoenas for the campaign documents; we have agreed at this time to attempt to move forward where individuals who worked in the campaign are named, and anything to do with that. However, if counsel, if Majority counsel, feels that we are not able to get the kind of information that might otherwise be produced and that would be necessary, we reserve the right to ask for a broader subpoena that would cover more than just those individuals that are named as it relates to the campaign.

(1521)

And I believe that that summarizes the agreement that we have come to.

Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Well, Mr. Chairman, let me say first that I want to commend the counsel who worked almost all night in trying to give focus and definition to what would otherwise I think have been overly-broad subpoenas, and I think they have done a very commendable job and I want to commend both Mr. Chertoff and Mr. Ben-Veniste in this regard.

As I understand it, we are now in agreement on the issuance of these subpoenas. I understand also, of course, that anyone receiving a subpoena has available to them the range of privileges that can be asserted in response to a demand for records. I am correct on that, am I not?

The CHAIRMAN. Of course. They can move to quash, yes, certainly.

Mr. CHERTOFF. What is available; that is correct.

Senator SARBANES. So they would have available to them whatever privileges can be asserted.

On the two matters:

On the one matter that has been deferred and the one matter that has been narrowed, my understanding is that the Independent Counsel objects to providing in effect the transcripts or the interviews with the President and the First Lady.

I think we should pay some respect to that.

Second, I think that getting the notes of their lawyers with respect to those interviews is really clearly a privileged matter, in my view. But in any event, that is being deferred and can be examined at a subsequent time.

With respect to political records from Williams & Connolly, I understand we are going to narrow that request—that counsel together would compile a good-faith list of named individuals that seemed to be in effect principals, so to speak. And, that we will make that request and will see what is forthcoming from that, and that will leave us open to further examination of it if the Chairman wishes to do so.

The arrangement that has been worked out on the telephone records I think is an imaginative one. We were very concerned that you get people's personal phone records for a sustained period of time and you delving into their private lives as well as any matters that may be relevant.

As I understand it, counsel will agree upon a third party who will then—when you subpoena the records, you get all the records. That is the problem, as I understand it.

Mr. CHERTOFF. That is correct, Senator.

Senator SARBANES. When you ask the phone company for the records, they cannot separate them out and they give you all the records.

A third party will be given by counsel names and telephone numbers of individuals that are deemed relevant to the investigation. The third party will then produce to them out of those records all such phone calls. And only those will become part of the Committee

record. The balance of the phone records will therefore be shielded. I think this is a commendable effort for some respect toward the privacy of the individuals and I think is a very constructive suggestion.

I just yield to Mr. Ben-Veniste. He was in this thing until late at night. I do not know whether he has any additional observations about the understanding.

Mr. BEN-VENISTE. Thank you, Senator Sarbanes.

Yes, I think we made a tremendous amount of progress.

It was an effort, as Chairman D'Amato suggested, among our staffs. Mr. Kravitz and Mr. Cole worked diligently with me, and others, as well as counsel for the White House, to try to narrow these areas, and I think we did.

We went back to the original request. We put aside all of the subsequent requests, and then narrowed that original request in scope of time for the individuals who were covered in a much more precise way.

We excluded from the Williams & Connolly subpoena, as I think is appropriate, the attorney-client work product of counsel to the President.

We agreed to include subpoenas for the telephone records and other documents of Ms. Lewis, as well as others who have been requested.

So now of the 38 subpoenas—or 38 requests for documents that we agreed to jointly, we can add now the personal records of the President and First Lady in the possession of their personal attorneys, and the subpoena to the White House.

With respect to the other witnesses, we have agreed, again using as the cutoff date the time of the appointment of Special Counsel Fiske; that we would ask for all Department of Justice records either in their possession or in the possession of Independent Counsel up and to that point in time; and we have agreed that Special Agent Steven Irons from the Little Rock, AR, FBI Office would in fact be requested to appear for deposition and possibly testimony in the next round of hearings.

In addition to that, I think there was a substantial and lawyer-like narrowing of other issues, both by time and by individual whose records would be sought.

With respect to specific information regarding campaign and political activities, I believe Senator Kerry has a point to make on that.

The CHAIRMAN. Well, let me say that I think we have fashioned subpoenas that begin the process of giving us the type of access the Committee needs to function in a more comprehensive and thorough manner. That is what we need. People have to know that we need all the documents, and they cannot just hold back when they choose. I am pleased and delighted that we have been able to do this again in a bipartisan manner and achieved the degree of cooperation that we have.

Again, there is one open issue; and there is the matter that the Committee may feel necessary to come back to request the wider subpoena scope as it relates to campaign documents, but that is a decision that we will make as we go along.

I would also like to announce at this time that the Committee will reconvene for the purposes of taking testimony from two witnesses on this Thursday, this upcoming November 2, Maggie Williams and Susan Thomases.

I believe that has been necessitated due to the information that has been recently made available to this Committee.

It would be our hope that we can take that testimony and then make findings as it relates to the initial scope of our inquiry, so that we can come to that. That will take some time.

In the meantime, we will be looking toward moving the hearings forward as we undertake this. This is not going to be an easy task, given the time constraints. But that is the intention.

Senator SARBANES. That would be next Thursday?

The CHAIRMAN. Next Thursday.

Senator SARBANES. Then would you expect the—

Senator KERRY. Mr. Chairman.

Senator SARBANES —following week to begin hearings on other subject matter?

The CHAIRMAN. I am going to leave that to staff. Given the fact that we are—Senator, as you are aware, staff is working right now on interviewing people and getting the facts in. If they give a recommendation that we are prepared to go forward the following week, we will then start the following week.

Senator SARBANES. I take it that is what we are shooting for?

Senator KERRY. Mr. Chairman.

The CHAIRMAN. That is what we will be aiming to undertake.

Yes, Senator Kerry.

OPENING COMMENTS OF SENATOR JOHN F. KERRY

Senator KERRY. Mr. Chairman, I want to understand. Within the agreement that you just articulated, you are now withholding both of these disagreed-upon elements? Or are you intending to still vote on one?

The CHAIRMAN. Oh, no. We are—I am deferring the question of whether this Committee has jurisdiction to ask for the notes that were taken at the depositions of the President and the First Lady. That is an issue I am going to ask counsel to research and to make a recommendation. If they believe we do have that right, then we will ask for the notes.

With respect to the campaign, I believe that we have agreed that we will limit the subpoena to those documents that relate to named individuals. If, as we go along, we feel that we are able to do the job and it is responsive to our needs, then we will not ask for broader subpoenas. That is an option that we will have, and we will let counsel work at that.

Senator KERRY. Mr. Chairman—

The CHAIRMAN. But at this point in time, it is only those individuals who are named.

Senator KERRY. Mr. Chairman, I appreciate that enormously. That is a step further than where we were when we huddled just before we convened.

The CHAIRMAN. It shows you what good teamwork does, huh?

Senator KERRY. It does indeed.

The CHAIRMAN. We got together in the huddle.

Senator KERRY. I appreciate that enormously. But, Mr. Chairman, if I may, I would like to just address for a moment two points.

Number 1, with respect to one of the subpoenas that is issued for a broad request for certain statements and thoughts from the President and Mrs. Clinton, I think that is encompassed in one of the subpoenas?

Mr. CHERTOFF. That is correct, Senator.

Senator KERRY. Now I just want to make certain that there is an understanding, because we are holding back on the other part, that not included in that are press and political strategy? I assume we are agreeing that that is not included or encompassed in the subpoena that is being issued?

Mr. CHERTOFF. I think, Senator, that there are two separate subpoenas the Senator is talking about. One is the subpoena for the campaign records where we have agreed, I think this morning—

Senator KERRY. I want to speak to that in a minute. That is separate.

Mr. CHERTOFF. —to deal with them in modified individuals. There is a subpoena we agreed on last night—

Senator KERRY. Correct.

Mr. CHERTOFF. —that even the White House agreed to, that relates to furnishing us with all statements made or adopted by the President or Mrs. Clinton regarding Whitewater, the underlying subject of the Committee's investigation. There is no limitation in that subpoena for the purpose or how you characterize the statements. What it is directed to are any statements that they made that have to do with Whitewater.

Senator KERRY. Correct. But what I am saying—I just want to make certain that we are not looking to the underlying—we are looking to statements that they made. We are not looking to sort of press, or political strategy statements that they may have made to somebody, or to each other?

Mr. CHERTOFF. I think, Senator, it is hard for me—I am not sure I understand what constitutes a “press or political strategy statement.” I think what we agreed upon was—and this was agreed to last night—if they have made any statements concerning Whitewater, those statements would be discoverable under the subpoena. If they made them to the press, I do not think we excluded that.

Senator KERRY. I am talking about internal, not external.

Mr. CHERTOFF. I think the subpoena—and again I say, Senator, we discussed this and agreed upon it last night—does not say that statements have to be made for a particular purpose.

Senator KERRY. Mr. Chairman, the reason I am concerned—and I am delighted that we have narrowed this down. Yesterday, and I want to emphasize this, when we discussed this I was anxious to try to have an agreement within the Committee. But I want to just ask the Chairman to refocus, if he will, on the scope, the specific scope, of the Committee. The Committee was set up: Number 1, the purposes of the Committee are to conduct investigation into the Vince Foster—well, clearly that does not apply here.

To conduct an investigation into the Resolution Trust management, the White House management, the Department of Justice management, RTC employees and so forth—

That all occurred while he was President. So that does not apply to campaign.

So then you come to only Section 3, where we are empowered to investigate. Section 3 goes to the operations, solvency, and regulation of Madison; it goes to the activities, investments, and tax liability; it goes to the policies and practices of the RTC; the handling by the RTC of the FDIC and Federal Savings & Loan of civil or administrative actions; the sources of funding and lending practices of Capital Management; the bond underwriting contracts between Arkansas Development; and, finally, 1990 Gubernatorial Election relation with Perry County Bank.

Now to be requesting campaign activities and statements with respect to that group of activities, I would respectfully suggest, is a broad reach. We have agreed, if it can be narrowed. All I am suggesting is that the narrowing is not exclusively the naming of people. The narrowing ought to be understood to be solely within the confines of those paragraphs that I just articulated. Because if it reaches beyond that, it reaches to people who may have had zero contact, or simply be relating hearsay or other kinds of comments within the context of the campaign, and we all know how campaigns do not provide a reliable source.

Senator SARBANES. As I understand it, it would have to deal with the subject matters that are in the Resolution which the Senator enunciated.

Senator KERRY. Well, that is what I want to make absolutely certain of.

The CHAIRMAN. That is how we are proceeding. I think the Senator has made that point. We are proceeding with respect to those matters that are within the scope of the Committee. We are not looking to go into a fishing expedition. We know that there are people connected with any campaign that the campaign has little to do with. I can attest to that, personally.

Senator KERRY. So again I reiterate. I assume, therefore, that preparation for a press conference, comments, and so forth——

The CHAIRMAN. No, no.

Senator KERRY. —strategy sessions such as that, are not included? Do you agree?

The CHAIRMAN. If it is about Whitewater—now we are moving from one issue to another. One is the campaign and the campaign documents. We will name those individuals. We have agreed to limit it.

Senator KERRY. Fine, I am in agreement with that.

The CHAIRMAN. The Committee and the staff agreed last evening that those statements regarding Whitewater that were made by the Clintons are certainly within the scope of the Committee and the subpoena, and that is the way we intend to proceed.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Am I to understand, Mr. Chairman, we are talking about the people making statements would have to be people who were principals here? There are hundreds of people involved in campaigns. People keep notes on what people say, and all of a sudden some volunteer, to use the extreme example——

The CHAIRMAN. The Senator is correct, and that is why we attempted to say that we would name individuals, as opposed to just taking anything said, done, or whatnot by anyone in connection with the campaign, or any contributor who may or may not have any relationship to the incidents or to those areas that we are reviewing. You are absolutely right.

Senator DODD. Let me just say, Mr. Chairman, and again I appreciate immensely what counsel have done here. I think this is a significant improvement over where we were yesterday.

But let me just also say, Mr. Chairman, and I may be a minority of one on this point——

The CHAIRMAN. Excuse me a moment.

[Chairman confers.]

The CHAIRMAN. Senator?

Senator DODD. Mr. Chairman, I may be a minority of one on this entire Committee, but I think it is important that I say so at this juncture.

We have had tremendous cooperation from this White House, unprecedented cooperation given the last 25 years or so where matters have come up involving the Executive Branch; this White House, by anyone's estimation, just exceeds what we have seen in previous White Houses in terms of cooperation. There is just no comparison.

The reason I say that is because we are now about to start something else. I just, generically, putting aside the details and individuals and subject matter, everything that goes around comes around. We are raising—we are moving into a whole new area, and I worry about it in terms of the kind of cooperation and the kinds of things that have to happen.

If it is going to become, as it apparently is now, that everything is going to be done this way through subpoenas on everything, I regret that in a way because I think we were making terrific progress. I just worry about it. I say, generically, this is a——

The CHAIRMAN. Let me say——

Senator DODD. —we are setting precedents here that go far beyond this. I just say to my colleagues here, I promise you—I promise you—these things come back. I just hope you might give some thought to that as we look down the road where this becomes a standard by which we try and seek cooperation between the Executive Branch and the Legislative Branch.

To disregard the precedent-setting nature of what we are about to do, totally beyond the parameters of this particular subject matter, I think is something that Members ought to give a great deal of thought to. Again, I am a minority of one, I presume, in that viewpoint but I will tell you that this is a dangerous path we have decided to open here.

When you have the kind of cooperation—we are not getting cooperation, the Chairman is absolutely correct, and I realize there are some questions that have been raised, legitimate questions; we bring people in, we get clarity on that—but to go now and open up a whole new legal route here, I worry about it.

Senator SARBANES. Well let me just say, I think the Chairman has indicated that these subpoenas go to all parties. They are not, as I understand, selective. So there will be 40 subpoenas.

The CHAIRMAN. That is correct.

Senator SARBANES. It is an approach I do think that the Committee is going to have to—if we continue using the subpoena approach, we are going to have to focus on them carefully. I think that happened between yesterday and today, and I think it is a more professional product from the Committee.

There was a suggestion yesterday that witnesses coming to testify would automatically be subpoenaed, but I gather now we have reached an understanding that only if counsel thinks there is some good reason that they will not come. It seems to me if someone voluntarily says, look, I will be there at 10 o'clock, they ought not to be slapped with a subpoena.

The CHAIRMAN. That is the methodology which I think we should continue to employ. Where there is an indication that the witness, or possible witness, will be cooperative and we ask for them to come in, we will not subpoena them. If it appears that that is not the case, then we will request subpoenas. So we will continue it.

Mr. BEN-VENISTE. Subpoenas are only for documents, at this point, and they are issued across the board to every agency that we have asked to produce documents, including the Department of Justice, the RTC, and everybody else who had any connection with any of the subject matters in this Resolution.

The CHAIRMAN. I will take a voice vote. All in favor of issuing the subpoenas as outlined, say aye.

[A chorus of ayes.]

The CHAIRMAN. Opposed?

[No response.]

The CHAIRMAN. The ayes have it.

We will make a part of the record those individuals or documents that are requested, in addition to the 9 telephone calls listed "a." through "i.":

Whitewater Special Committee Document Requests: Arkansas Bank Department; Arkansas Development Finance Authority; Arkansas Securities Department; Ausen, Lee; Berman, Michael; Blair, Jim; President and Mrs. Clinton; Coleman, Randy; DOJ; FDIC; FDIC-IG; Frost & Co.; Hubbell, Webster; Iorio, Richard; James, Charles; Lasater, Dan; Lewis, Jean; Lindsey, Bruce; Lyons, James; OGE; OTS; Patten, McCarthy; Redden, Yoly; RTC; RTC-IG; Rose Law Firm; Schaffer, Beverly; SEC re: Lasater; Seidman, Ricki; SBA; SBA-IG; Thomases, Susan; Thomasson, Patsy; Tisdale, John (Clinton Gubernatorial Papers); Treasury; Treasury-IG; Tucker, Jim Guy; White House; Williams & Connolly; Wright, Betsy.

Telephone Calls:

- a. Long-distance telephone records for all calls from the White House to Area Code (501) from May 1, 1993 to November 30, 1993.
- b. Home long-distance telephone records for April Breslaw to Area Code (202) from August 1, 1993 to January 30, 1994.
- c. Home long-distance telephone records for Paula Casey to Area Code (202) from August 1, 1993 to November 30, 1993.
- d. Home long-distance telephone records for Webster Hubbell to Area Code (501) from May 1, 1993 to November 30, 1993.
- e. Home long-distance telephone records for William Kennedy to Area Code (501) from from May 1, 1993 to November 30, 1993.

f. Home long-distance telephone records for Bruce Lindsey to Area Code (501) from May 1, 1993 to November 30, 1993.

g. Home and office long-distance telephone records for James Lyons to Area Codes (202) and (501) from May 1, 1993 to November 30, 1993.

h. Home long-distance telephone records for Bernard Nussbaum to Area Code (501) from May 1, 1993 to November 30, 1993.

i. Home long-distance telephone records for Margaret Williams to Area Code (501) from May 1, 1993 to November 30, 1993.

The CHAIRMAN. This Committee, for purposes of continuing its work on Whitewater, will reconvene on Thursday, November 2. It is our intention to notify both witnesses, Margaret Williams and Susan Thomases, and ask them to appear.

We stand in adjournment.

[Whereupon, at 10:30 a.m., this meeting was adjourned, to reconvene on Thursday, November 2, 1993.]

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

THURSDAY, NOVEMBER 2, 1995

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.**

The Committee met at 9:30 a.m. in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. We have reconvened the Special Committee today in order to recall two witnesses, Hillary Rodham Clinton's Chief of Staff, Maggie Williams, and Susan Thomases.

The reason we are holding this hearing today and bringing you both back before the Committee is a very distressing one. The Committee did not receive certain critical information that we had requested regarding telephone calls from July 20 through July 22, 1993, the 2 days after White House Deputy Counsel Vince Foster committed suicide.

Particularly important and requested by this Committee on June 30 were calls to and from the Rodham residence in Arkansas where Hillary Rodham Clinton was staying between July 21 and 22, 1993.

These dates are important because, as testimony before this Committee has revealed, it was sometime before 10 a.m. on July 22, 1993 that White House Counsel Bernard Nussbaum reneged on the agreement he had made the evening before with the Department of Justice to allow prosecutors to review the documents in Mr. Foster's office.

The Committee sought, during hearings 2 months ago, to find out who or what influenced Bernard Nussbaum to break his commitment to allow the Justice Department to review the documents in Vince Foster's office.

What we have now discovered, weeks after our summer hearings and only after the threat of a subpoena, is that there were more phone calls in the early morning hours of July 22 than we knew, which suggests that these phone calls were the precise reason Bernie Nussbaum changed his mind.

There is a phone call between Maggie Williams and the First Lady at 6:44 a.m., Little Rock time on July 22, lasting 7 minutes.

Then at 6:57 a.m., Little Rock time, Hillary Clinton places a call to Ms. Thomases. Then Ms. Thomases places a call to Mr. Nussbaum's pager.

These phone records suggest a clear route of influence, yet for some reason, neither the Clinton White House nor Maggie Williams, the First Lady's Chief of Staff, nor Ms. Thomases remembered these calls, and these records were only belatedly furnished to the Committee after you had testified. As a consequence, this Committee reached a unanimous decision to recall you.

The information that is coming out now is disturbing and simply fuels suspicions. At this point I will swear in the witnesses and ask them to stand, take the oath of office.

[Whereupon, Margaret Williams, Chief of Staff to the First Lady, and Susan Thomases, attorney at law were called as witnesses and, having first been duly sworn, were examined and testified as follows:]

The CHAIRMAN. We are going to proceed, as we have in the past, with the openings on each side confined to a half hour. I am going to ask that we attempt to ask our questions in a manner which will reduce the amount of time necessary, and extend some latitude to both sides. We seek the facts and that's what we are going to do.

Senator Sarbanes.

OPENING STATEMENT OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, I just want to make a short statement, because my perception with respect to the furnishing of these records differs somewhat.

A general request was made to these witnesses and to which they responded. It was then toward the end of our hearings that Counsel raised with us the need for them to get their own telephone records from the telephone company, which of course these witnesses did not have. All of the witnesses responded to that and voluntarily requested those records of the phone company, and they were provided to the Committee.

Now, I think there's a gap here between the general request back in June and the more specific request that was made in August, to which we did receive a direct response with the cooperation of the witnesses. We had joined, of course, with you in seeking those records, and then also went to counsel for the witnesses and urged them to provide the records, and they did do so voluntarily, although in Ms. Williams' case, it was necessary to use a subpoena because of the rules of the phone company, which would not respond voluntarily to the request because the records were dated.

I might note that Mrs. Rodham, whose records were obtained, was not even included in the June request. So that was a new starter, as it were, on the 9th of August. I just think it's important to place that on the record.

The CHAIRMAN. At this point, I will turn to Senator Mack.

OPENING COMMENTS OF SENATOR CONNIE MACK

Senator MACK. Thank you, Mr. Chairman.

We are here because serious criticisms have been raised by high ranking Justice Department officials about the handling of documents in Vince Foster's office. We keep coming back to this, be-

cause until now, it was unclear why Mr. Nussbaum reneged on his agreement with the Justice Department.

From the newly produced phone records, we now have further evidence to suggest that Mrs. Clinton was deeply involved in deciding how the documents would be handled.

Here is why I think that. Again, we now have five new phone calls. One that I will specifically mention at this point which was early in the morning on the 22nd from Ms. Williams to the First Lady.

Now, the reason that that's significant is because that's the day, that's the morning before a meeting took place to determine how the documents in Foster's office would be handled that, frankly, in my opinion, relates to the testimony of Steve Neuwirth, the associate White House Counsel, under oath, who indicated that the First Lady and Susan Thomases telling Nussbaum about their concerns about unfettered access to those documents, along with Tom Castleton's testimony under oath about the First Lady wanting to review the documents taken out of Foster's office, and testimony by Nussbaum that one file was returned to the Counsel's Office, thereby suggesting that the files were in fact reviewed by the Clintons.

Ms. Williams, you have always said that you were unaware of any involvement that the First Lady may have had in the decision about how to search the office. In fact, I believe it's fair to say that you were rather indignant about that during the July hearings, suggesting that the Committee had drawn the wrong conclusions.

Since that time, I frankly have reexamined those phone records and looked carefully at the new calls. I have to tell you, I really have more questions today than I did then.

So let me frame the discussion here with your previous statements to the Committee. Basically in your deposition and before this Committee, you indicated that you did not speak to Susan Thomases over the phone during those crucial days.

**SWORN TESTIMONY OF MARGARET A. WILLIAMS
ASSISTANT TO THE PRESIDENT AND
CHIEF OF STAFF TO THE FIRST LADY**

Ms. WILLIAMS. Can I see——

Senator MACK. I will give you an opportunity——

Ms. WILLIAMS. Can I see my deposition that you're reading from? That's what I would like to see.

Senator MACK. It's on page 58 of your deposition.

Ms. WILLIAMS. Do you have copies of it?

Senator MACK. Again, I will frame this for you, as I recall it, Ms. Williams.

As I recall it, you basically have taken the position that you did not talk to Ms. Thomases on the phone during those days and that you had one contact, which you believe was in person.

Now again, having used that as a background, we are now aware that in fact that there was a phone conversation between you and Ms. Thomases on the morning of July 21. What we had in the past was a page to you at 12:15, and when we had discussions with you during the hearing, we had no phone records to indicate that you had called back. Again, you have indicated that there were no phone calls between you and Ms. Thomases, but now we have this

new phone record which indicates that you called her back at 1:14, and that the two of you spoke for 14 minutes.

Now, Mr. Chairman, if this were the only omitted call, I doubt that this Committee would have requested that Ms. Williams and Ms. Thomases be brought back, but the fact is that there are four additional phone calls that we didn't know about.

Now, have you had a chance to take a look at the deposition?

Ms. WILLIAMS. Well, there's some parts that—this is excerpted, so I need to get——

Senator MACK. Let me ask you this: Do you disagree generally with the characterization that I have made with respect to your testimony?

Ms. WILLIAMS. Well, I need to help you a little bit here, because what I said in my deposition and what I said during the testimony is this—and I would like to read it to you so that we are working from the same base of factual material. If the Committee will just bear with me.

Senator FAIRCLOTH. Would the witness speak into the microphone.

Ms. WILLIAMS. I'm sorry. I said I think it's important that we start from the same base of factual material, so if the Committee will bear with me for a moment, I would like to return to my testimony and read that part that's relevant to this in particular. One second.

Senator MACK. Ms. Williams, I think it would be helpful if you were to read from your deposition on pages 57 and 58 with regard to this.

Ms. WILLIAMS. I see that, but in addition to that, I do have testimony, and this looks fairly excerpted.

Senator MACK. The deposition is? Maybe we could get someone else to read into the record, then——

The CHAIRMAN. Let me state——

Ms. WILLIAMS. Mr. Chairman, I'm very happy to have anybody who wants to read into the record my deposition, but I first am going to find what I said in my testimony, so you will have to bear with me until I get it.

[Pause.]

If Mr. Chertoff will help me, I'm looking specifically for our exchange about whether or not I had conversations with Susan Thomases. It's in my testimony. If you will lend me a hand, I will find it.

Senator MACK. If I can just, and then you all can continue your discussion, but at least what I have from the deposition, page 58, Williams, "my recollection of talking to Susan that week was not over the phone and——

The CHAIRMAN. Ms. Williams, let me ask you to do this, please. The Senator is referring you to your deposition. We will come back to your testimony, but with regard to your deposition, would you—you have a copy in front of you—turn to page 57?

Senator MACK. Yes, page 57.

The CHAIRMAN. Would you look at that, please?

Senator SARBANES. Mr. Chairman, I think the witness' testimony before the Committee elaborated upon and clarified her deposition.

She ought to be allowed to bring that in simultaneously or contemporaneously with the deposition.

The CHAIRMAN. That's exactly what I believe should be the case, and so let's go, please, to the deposition, and then we will return to the testimony because we want to get the facts. But I am not going to permit the witness to determine what order we will look at these, we will look at them contemporaneous so that we will have the whole picture.

Ms. WILLIAMS. Mr. Chairman, I have to find it first, so that we can be contemporaneous.

The CHAIRMAN. I will ask the aide, would you please point out to Ms. Williams—

Ms. WILLIAMS. I know what I am looking for specifically. I really don't mean to raise a problem with this, but I think we should be starting from the same set of facts.

The CHAIRMAN. We will take a recess and find the page of testimony. But I am going to assure the witness that we are going to return to Senator Mack's question with some specificity concerning page 58. This Committee will not permit the witness to dictate to the Committee what we are going to examine and in what order we are going to examine it, because we will examine with specificity page 58. The Senate has a right to put forth a question.

We want candor and we want to give the witness all of the opportunity that the witness deserves to testify before this Committee and put into context statements in depositions that were taken. I assure you we will do that.

We will take a 5-minute break for the purposes of establishing with specificity where your testimony began before this Committee. Also we will return to the Senator so that he can pose those questions and we will do it in the order that the Senator requests.

However, we will give the witness an opportunity to reflect on the fullness as it relates to the testimony that she gave here also. The Chair deems that to be the proper methodology to proceed, so we're going to take a 5-minute break.

Senator MACK. Mr. Chairman, let me just add what might help. Again, deposition page 58, deposition page 76 and from—I believe these are transcripts from the hearing, pages 186 and 187.

Ms. WILLIAMS. Thanks.

[Recess.]

The CHAIRMAN. As it relates to the deposition, I would like to give your client the opportunity to review pages 57, 58, and 76.

OK, Counsel and Ms. Williams have indicated that they are prepared, and so I would now ask the Senator to resume his questions.

Senator Mack was asking you, Ms. Williams, to look at your depositions, pages 57 and 58, which you have in front of you.

Senator Mack.

Senator MACK. Again, I will just kind of restate and then give you an opportunity to respond. Basically, it was my impression from testimony before the Committee and in your deposition that you do not recall having a phone conversation during that week with Ms. Thomases, but you recall one conversation with her which took place in person. That's kind of the basis that I am coming from.

Ms. WILLIAMS. The way that you phrased it this time, and I'm really not trying to be difficult, but you said it right this time. What I recall. What I remember.

Senator MACK. Why don't you read into the record then once again what you think——

Ms. WILLIAMS. You said with such certainty that I said I didn't remember what I said, and this is what I recall.

In addition to saying that throughout my testimony and throughout my deposition, I said, throughout my deposition and throughout my testimony, I said it is what I recall, but I talked to Susan Thomases all the time. So while I did not recall every conversation I had, I told you what I remember and what I remember is what I remember. That was the question at that point in time.

Senator MACK. Do you remember, now that we have this information, about your returning a call to Ms. Thomases on July 21? Does that now ring a bell with you at all?

Ms. WILLIAMS. Well, I don't argue the accuracy of the phone records, and if I called her back at 1 o'clock-whatever-it-was in the morning after she had paged me, I mean I don't argue with the accuracy of that. I——

Senator MACK. In the deposition, again on page 57, referring to this same conversation we are talking about where Ms. Thomases paged you, in your deposition you stated:

Yeah, I mean she could have paged me. I didn't talk to her.

There was not anything about, "I don't remember talking to her, I don't recollect." You said, "I didn't talk to her."

Ms. WILLIAMS. Page 57.

Question: And when you got back, did you have a conversation, when you got back home after being at the White House that evening, did you have a conversation with Susan Thomases?

Answer: No, I don't remember. I remember having a conversation with her the next day or something.

Question: Did she page you that night?

Answer: She could have.

Question: Would you have returned her call?

Answer: Yeah.

Question: Would it help to refresh your memory about paging you if I tell you I have a White House record that indicates you received a message to please call Thomases at 12:15 in the morning?

Answer: Yes.

I mean, she could have paged me. You did refresh my recollection by saying that in fact she had. I don't argue with the accuracy of these kinds of records. I said a lot of people page me. I don't get back to, you know——

Senator MACK. But you skipped a line there, the part that I am getting at, which is that you stated: "I didn't talk to her."

Ms. WILLIAMS. Well, what about the lines—no, no.

Senator MACK. Is that in there or have I misspoken?

Ms. WILLIAMS. Can I tell you?

Senator MACK. No. Have I misspoken?

Ms. WILLIAMS. You have not misspoken, but what you have done is simply to disregard everything else that was said in an effort to make a very small and narrow point.

If you look at my entire deposition——

The CHAIRMAN. Ms. Williams, please, Maggie Williams, please, the Senator did not do that. I am reading this and he is quite correct, you just skipped a sentence, and the sentence is the question that he asked you. Did you or did you not indicate in your deposition with clarity that you did not talk to her?

Ms. WILLIAMS. Did I or did I not represent in my deposition at the very beginning of page 57, saying: "I don't remember. I remember having a conversation with her the next day or something."

Clearly in this section of this discussion, I indicated that I had no recollection.

Senator MACK. Ms. Williams, I don't disagree that you said that. All I'm saying is that you went on further in that statement, to be fairly specific, though, about that one particular phone call, making a statement: "I didn't talk to her."

Now, listen——

Ms. WILLIAMS. I'm not going to argue with you. I think this is exactly what I said.

Senator MACK. I beg your pardon?

Ms. WILLIAMS. I said I'm not going to argue with you.

The CHAIRMAN. I have to tell you, the record is in front of you, and——

Ms. WILLIAMS. Chairman D'Amato, it's finished, it's fine.

The CHAIRMAN. Pardon me?

Ms. WILLIAMS. It's fine. We can move on to the rest of Mr. Mack's question.

Senator MACK. Mr. Chairman, I must say, I don't like to do this, either. I mean, this is not fun. I don't think that anybody up here enjoys this process. We would just as soon it did not happen, but there are responsibilities that I think that come with being a Member of this Committee in the Senate and pursuing this investigation. I am just trying to do what I think is my job, and let's both of us try to do that.

I'm now going to go further into the phone calls of July 22. This was the 21st that we were referring to, because there are new calls on this date as well. I'm going to try to tie these in with the old calls that we have, in order to kind of frame some context.

Again, I'm going to make another statement, and maybe we will have to get into another discussion about either what I implied or what you said, but it is my impression that you have indicated to us before that you remember speaking to the First Lady twice on the 21st and one time in the evening of July 22. Is that a fair representation?

Ms. WILLIAMS. That is what I recall. The question was when do you recall speaking to her, and I said when I recalled speaking to her.

Senator MACK. When was that?

Ms. WILLIAMS. I spoke to her on the—I spoke to her on the 20th twice, maybe it was the morning of the 21st. It was late in the evening. The first call where she told me that Mr. Foster was dead, which was around 9 o'clock or 10 o'clock, I believe. Then I said that I also spoke with Mrs. Clinton much later that night so it could have been early morning. I think the phone records are consistent with that.

Senator MACK. Tell me that again because I think that's important. You think you spoke with her when?

Ms. WILLIAMS. The 20th was Tuesday, the evening that Vince was killed or died, and then I said I spoke with Mrs. Clinton again that evening.

Senator MACK. Now, that evening, tie that down for me a little bit more.

Ms. WILLIAMS. Well, I said I recall that as the evening of the 20th, late on the evening of the 20th. The phone records suggest that in fact I guess I talked to her early Wednesday morning, 12:56 a.m., which I considered late in the evening on the 20th.

Senator MACK. We may get into those phone calls a little later. What I'm referring to is the morning of the 22nd.

Ms. WILLIAMS. The morning of the 22nd?

Senator MACK. Right. The new records that we have indicated that you placed a call to Mrs. Clinton on——

Ms. WILLIAMS. I called the Rodham residence at 7:44 a.m. on the 21st.

Senator MACK. Which is 6:44 a.m. Arkansas time?

Ms. WILLIAMS. Yes.

Senator MACK. Is it kind of common for you to call the residence that early in the morning?

Ms. WILLIAMS. Well, when she's not in Arkansas, I do speak to her very early in the morning before she starts her day. She had an event that day at 10 o'clock so it would not be unusual for me to call early.

I don't even know if I spoke to her. In fact, at 7:44 a.m., since it was the Rodham residence, there were other people there so I don't know if I spoke, in fact, to her, but I did call.

Senator MACK. Which is a call at the time of the hearing you did not remember making?

Ms. WILLIAMS. No, I didn't remember it.

Senator MACK. Now, after that phone call to whoever you may have spoken to, it is interesting.

This is other new information we had with respect to phone calls is that 6 minutes later, the First Lady then called Ms. Thomases.

I think, why it's significant to me is there was a sense on your part last time is we were kind of really chasing something that wasn't there. I was trying to tie in that the First Lady may have had some kind of connection to the decision that Bernie Nussbaum had made. We knew that Ms. Thomases had paged Bernie Nussbaum at 8:01 on that morning, but we didn't have any information for that.

What we have are two phone calls, one that goes from you to the Rodham residence, and I will say from my perspective, I believe that that was a call that you had with the First Lady, who after your call, then called Ms. Thomases. When Ms. Thomases hung up the phone 1 minute later, she paged Bernie Nussbaum.

But you don't recall anything about the conversation that you had with the residence that morning? You don't know who it was to, you don't know what it was about?

Ms. WILLIAMS. If I was calling the residence, it is likely that I was trying to reach Mrs. Clinton. If it was 6:44 a.m. in Arkansas, there's a possibility that she was not up. I don't remember who I

talked to, but I don't find it unusual that the Chief of Staff to the First Lady might want to call her early in the morning for a number of reasons. No. 1, she had an event that day; No. 2, one of her good friends had just died and I was concerned about her. I knew I only had so much time to catch her before she started her day.

Senator MACK. Yes, but it seems to me——

Ms. WILLIAMS. I don't find it unusual——

Senator MACK. It seems to me that was a very unusual situation. It's not something that happens every day, that a dear friend has died. It would seem to me that you would remember that call to the First Lady, at least as to whether you got it or whether you didn't.

Ms. WILLIAMS. What I thought were significant calls, the calls that I remember, I told you about, and actually for the most part, the calls that I remember are pretty much consistent with the phone record. Did I remember every single call? No, I did not. Do I believe that the record is accurate in reflecting other calls that I made? I do. But I would challenge each of you to remember every single call you make every single day.

Senator MACK. I think that's a valid point, I mean I really do. But let me suggest, the difference about what is going on here is that—this is not me saying to you off the top of my head, what about some phone calls July 22.

You have spent, I would assume, a considerable amount of time on going through records to determine in fact what calls were made and what calls weren't made, so this is——

Ms. WILLIAMS. Well, the amount of time that I spent, I got the records at the same time that you got the records of my personal phone calls. The record, as I said, is fairly consistent with most of all the calls I made, save two or three that the record adds to. I don't dispute for a moment that I made those calls.

Senator MACK. But you don't remember anything about that phone call?

Ms. WILLIAMS. No, I don't. I make quite a few phone calls during the day, and I talk to the First Lady quite a bit. I don't remember every phone call I have with her.

Senator MACK. All right, very good. Let me move on, then, to calls between 10 a.m. and 12 p.m. on July 22.

There were a series of phone calls from Susan Thomases to a number of individuals. The calls that I'm referring to are the calls that came into your office. Back during the hearing, you pretty much indicated to us that, without further documentation, I mean anybody could have been on the phone to Susan Thomases. That wasn't you.

We now have a letter from the White House that indicates that no one else, who would have normally been in that suite of offices, remembers talking to Susan Thomases as well. It just seems strange to me that all of these phone calls—again, 9 o'clock, there was a call from Thomases to you or to that number, message for you to call. At 10:48 a.m., Thomases calls Chief of Staff McLarty's office. At 11:04 a.m., Thomases calls Williams' office again, spoke to someone in the office for 6 minutes. Then Thomases calls the Chief of Staff McLarty's office and spoke with someone there for 3 minutes. Then back to McLarty's office again. Then calls your office

again, spoke with some person for 11 minutes. Then called again at 11:50 a.m. and spoke with somebody else for 4 minutes.

In other words, in a 46-minute period, Ms. Thomases seems to be talking to some phantom. I mean, there's nobody that the White House could identify that remembers speaking to Ms. Thomases. Then somebody that you have indicated that you talk to all the time—now when all of these calls were coming into—you apparently never got back to her, never had those conversations, don't recall it. There's no recollection on your part of speaking to somebody you spoke to all the time. That's my kind of impression of this series of calls. Any comment? You just don't remember those calls?

Ms. WILLIAMS. I was under oath the last time I was here. I am still under oath. I don't remember those calls, although I will say that, and this is simply speculation on my part, having looked at the records now since I have them, first of all, the 9 a.m. call from Susan was not a call. She left a message.

Senator MACK. I think I said that, yeah.

Ms. WILLIAMS. "Call when you get to the office." After looking at my records and my schedule, trying very hard to help you make some sense of these calls—and let me just throw this out. It looks as if I was at home from at least that whole morning until at least 12:55 p.m., where I had another call.

My records show that I called Arkansas, returning a page from Mrs. Clinton's personal assistant, which was at 12:47 p.m. The page was at 12:57 p.m. I returned the call from home at 12:55 p.m. Susan Thomases calls at 9 a.m. and leaves a message, "Call when you get into the office."

Then, by looking at my own schedule, I see that at 1:30 p.m. is my first afternoon meeting so I don't have a specific reason to be in the office before 1:30 p.m.

So I mean I'm not—I mean I just throw it out as I try and think through these things, but it strikes me that on the morning of the 22nd, given both the phone records, the phone messages and my own home phone records, would show that I returned a call to Little Rock at 12:55 p.m. I assume that I was home.

Senator MACK. So your testimony today basically is that what you're adding for us, because I don't believe I picked this up from the last hearing, that you really weren't at the White House, then, that morning? You were at home that morning? When——

Ms. WILLIAMS. I'm sorry, go ahead.

Senator MACK. Again, I don't know that it means anything significantly, but it is kind of the first time that I would have thought that you were not in the White House when these discussions were taking place. I would assume that your phone records, which I guess we only have a portion of because those phone records would relate to specific phone calls to the First Lady. But I would assume then, your phone records probably would indicate that you made other phone calls from your residence that morning between the time that you placed the call to the First Lady and the 12 o'clock-something call that you referred to a minute ago.

Ms. WILLIAMS. Could be. Could be. As I said, I don't add it to my testimony because I don't really know. But as I look at the phone records, I think that it's, you know, interesting to note, in terms

of the calls that you suggest were coming to me directly from Susan Thomases——

Senator BENNETT. Would the Senator yield quickly?

Senator MACK. Sure.

Senator BENNETT. I assume there are White House logs that could be consulted to determine whether she was or was not at the White House if that's an important issue. You don't have to depend upon anybody's memory on that. White House guards check people in and out all the time.

The CHAIRMAN. I'll ask our Counsels to ascertain from the White House logs any time or any indication——

Senator MACK. If I could—because again you've touched on these calls, because this is another area of discussion, that you received a page from the First Lady's assistant, I guess, from Arkansas. Again, my recollection is that you didn't recall returning that call. But now we do have the record that indicates that, in fact, you did return the call to the residence. I believe, again, from what you said a moment ago, that call was made from your residence.

Is it normal practice that when you are engaged in activities, I guess, that would be related to the White House, that you would make a call on your personal number or your credit card as opposed to billing that call to the White House?

Ms. WILLIAMS. It just depends. I would assume that the White House owes me hundreds of dollars on calls I have made on my own line because I picked it up.

Senator BOXER. Do we have any way we're running these hearings? Do we have a certain timeframe per Senator? If so, could you inform us as to what it is?

The CHAIRMAN. Each side gets a half hour opening. You will get the next half hour.

Senator BOXER. Thirty minutes a side?

The CHAIRMAN. Right.

Senator SARBANES. That's the opening round. Then we go to 10 minutes, but the opening round, which past practice was usually to yield it to Counsel, today Senator D'Amato yielded it to Senator Mack and he's using the first 30 minutes. After the expiration of that, the time will come over to this side.

It's a little later than one would expect because we took a recess. I say to the Senator, I think before you came, there was a recess.

The CHAIRMAN. That's right. I've asked whenever inquiries such as this have been made that the clock be stopped, and when the witness asks for some time to review the minutes, the clock be stopped. That will apply to both sides.

Senator BOXER. Thanks very much.

Senator MACK. Last question I would ask with respect to that phone call, do you remember anything about what that phone call was about?

Ms. WILLIAMS. No, I don't.

Senator MACK. Late afternoon on the 22nd, you called the First Lady? I think that's the call that you have testified to.

Ms. WILLIAMS. That's correct.

Senator MACK. Let me just ask one more question before I kind of sum up my thoughts on this. Are there any other phone calls that you think you ought to be aware of, again having gone

through this the second time and with the new information, that you want to tell us about, that—as far as you’re concerned, no other phone calls?

Ms. WILLIAMS. Well, I mean I don’t have any other records except the same records that you have. The calls that I remember I have testified to.

Senator MACK. Mr. Chairman, I know that this Committee has tried not to draw conclusions before we have heard all the evidence. But frankly, I think—at least I have formed an opinion about all this phone traffic between Ms. Williams, Ms. Thomases, and the First Lady, and I would just like to give a summary of that opinion now.

In the last round of hearings, I was troubled by Ms. Williams’ acquisition that the Committee was being too conspiratorial. I thought carefully about what she said to make sure I wasn’t reading too much into all this. But now we get these new calls after the last set of hearings concluded, and I feel very confident that this Committee has something to be concerned about.

We know Steve Neuwirth testified under oath that Bernie Nussbaum told him Susan Thomases and Hillary Clinton had concerns about unfettered access by law enforcement to Vince Foster’s office. We now know that there was, in fact, a phone call that went from Maggie Williams to the residence. I happen to believe that the First Lady was in that conversation.

Immediately following that conversation, the First Lady calls Susan Thomases, and 1 minute after that call is completed, a call goes into Bernie Nussbaum.

We know that Tom Castleton testified under oath that Ms. Williams told him the documents were being taken to the residence so that the First Lady could review them.

Ms. Williams earlier said she remembered, again, only one conversation with the First Lady on July 22 and that was in the evening. In reality, there were 10 total attempted phone calls between Ms. Williams and Ms. Thomases, and 7 total attempted calls between Ms. Williams and the First Lady. That’s a total of 17 total calls between the three of them in less than 48 hours. Of those 17 I have counted 13 connections, 6 with the First Lady, 7 with Susan Thomases.

What I see is a day that began and ended with Maggie Williams, Susan Thomases, and Hillary Clinton conversing. Ms. Williams started the day at 6:44 a.m. Arkansas time with discussions that something needed to be done to keep law enforcement out of Foster’s office. She ended the day with a conversation with Ms. Thomases, and a conversation with Hillary Clinton to let them know, mission accomplished.

Senator SIMON. Would my colleague yield?

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Senator Simon, sure.

OPENING COMMENT OF SENATOR PAUL SIMON

Senator SIMON. Well, I was going to ask my colleague from Florida whether the statement he just read was prepared before we heard the witness. If so, I’m not sure what the purpose of this hearing is.

Senator MACK. I must say to my colleague that nothing that was said this morning was a surprise. What I have just indicated, I feel, is pretty accurate.

Thank you, Mr. Chairman.

Senator SIMON. I thank my colleague for yielding.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator Sarbanes.

I guess I would like to start by refocusing on August 10, 1995 when this issue came up, of home telephone records, before this Committee and address, if I can, in my questions to Ms. Williams and Ms. Thomases, the issue of whether information was withheld by witnesses, which was the first allegation raised last week leading to the calling of this hearing.

I would call the Committee's attention to page 162 of the transcript of our hearing on August 10. Just to put it in context, we were discussing with Mr. Nussbaum the question of the Presidential Records Act. I made the comment:

Mr. BEN-VENISTE. Mr. Chairman, I believe we've gone right for the capillary here.

Mr. CHAIRMAN. Now that we've found the capillary. I'm going to say it is my intention to have subpoenas issued—I would hope that the Ranking Member could find his way clear to join with me in this, so we don't have to seek a vote of the Committee—for the telephone logs at the telephone company, for the Rodham residence in Little Rock, Ms. Williams' residence, and for Ms. Thomases for the dates in question.

Then there is more discussion of that, and picking up from page 166, where Senator Sarbanes had spoken and said:

On the telephone records, as I understand it, all the parties are voluntarily prepared to provide us this information. And it seems to me that, as we have done heretofore, we ought to proceed on that basis. If, in fact, there proves then to be a problem, I think we can examine the question of issuing subpoenas. But when you have people that are in effect saying, we are willing to work with you and cooperate with you and get these records, I think we should follow that path. I have no reason to expect a problem, but if for some reason a problem arises, then we could address the question of issuing the subpoena.

So let me pick up from that point, and then first deal with the Rodham records of Mrs. Clinton's mother's home in Little Rock. And that was addressed, I believe, immediately, Mr. Chairman, by Mr. Kendall, who did not wait for a request to come from this Committee, but who initiated correspondence to this Committee on August 9, 1995, right to Senator D'Amato and Senator Sarbanes.

"I understand that the Special Committee has an interest in obtaining from the telephone company certain telephone records for the residence of Mrs. Hugh Rodham in Little Rock, AR. Mrs. Rodham is prepared to seek those records voluntarily for you in response to any reasonable request. I would respectfully ask that the Special Committee provide me with more precise information concerning the records it wishes to review."

Then at the request of Mrs. Rodham, those records were provided to us.

With respect to the records requested of Ms. Thomases, we made the request of Ms. Thomases' attorney on August 9 and the response was received by telefax on the very same day: "Dear Gentlemen, we are in receipt of your written request, faxed to our offices late this afternoon, requesting the home telephone records of Susan P. Thomases. As she has previously done with respect to the Spe-

cial Committee's request of July 11, 1995, Ms. Thomases will provide the Special Committee records of all relevant telephone calls as reflected in her residential telephone records. Because Ms. Thomases does not retain such information, we have requested today that the telephone company provide us with the relevant records for this period, and we have been assured that the records will be transmitted to us promptly."

Ms. Thomases, is that your recollection of what transpired with respect to home telephone records that you did not have in your possession as of August 9, 1995?

**SWORN TESTIMONY OF SUSAN P. THOMASES
ATTORNEY AT LAW
WILLKIE FARR & GALLAGHER, NY**

Ms. THOMASES. Yes.

Mr. BEN-VENISTE. Were you able to secure records requested by this Committee and produce them voluntarily?

Ms. THOMASES. Yes, I was able to secure records with respect to the House we rent in Rhode Island, but our New York City residence, the NYNEX there does not keep the records, and did not have the records. But you got the records with respect to the available records from our house in Rhode Island, which is where I go on the weekends.

I have a short opening statement that I would like to deliver at some time, if the Chairman would let me do that.

Mr. BEN-VENISTE. I would certainly let you do that. Mr. Chairman, would that be appropriate?

The CHAIRMAN. Certainly.

Ms. THOMASES. Mr. Chairman and Members of the Special Committee, I hope that appearing before you today will be helpful in clarifying questions some Members have about events surrounding Vince Foster's tragic death.

My recollection of those events, and my overall memory of what happened at that time remain essentially the same as when I appeared before you last August.

During those sad and emotional days, I remember being quite busy with work in New York and Washington, but at the same time trying to visit or talk with those in the White House whom I knew would be deeply affected by Vince's death.

As I stated in August, in particular I never received from anyone or gave to anyone any instructions about how the review of Vince Foster's office was to be conducted or how the files in Vince Foster's office were to be handled.

As I also noted in August, I know that others recall some of these event differently, and because my recollections have not changed, I cannot necessarily resolve these differences.

It does seem to me, from testimony before this Committee, that in recalling various events, other witnesses' memories, like mine, seem to have been very strongly influenced by whatever concerns were foremost in their minds at the time. Considered in that light, perhaps these differences are more understandable.

Thank you, I will try to respond to your questions.

Mr. BEN-VENISTE. Thank you, Ms. Thomases.

Let me ask you to respond to the correspondence which we just reviewed. Did you withhold from this Committee any information requested by this Committee that you had in your possession?

Ms. THOMASES. No.

Mr. BEN-VENISTE. Good morning, Ms. Williams.

Ms. WILLIAMS. Hi.

Mr. BEN-VENISTE. Let me ask you whether you recall the circumstances wherein home telephone records were requested of you. Did you keep your home telephone long distance records for 1993 when you were requested in 1995 to produce such records?

Ms. WILLIAMS. No, I did not.

Mr. BEN-VENISTE. There was a request made of you to see whether you could produce them voluntarily by requesting them from your telephone company; is that correct?

Ms. WILLIAMS. That is correct.

Mr. BEN-VENISTE. Did you ask Mr. Dennis, your attorney, to assist you in that project?

Ms. WILLIAMS. Yes, I did.

Mr. BEN-VENISTE. Mr. Chairman, with your permission, Mr. Dennis, could we inquire of you for just a moment.

Mr. DENNIS. Yes.

Mr. BEN-VENISTE. Good morning, sir. Whether, in fact, you made an effort to obtain the requested records from Ms. Williams' telephone company?

Mr. DENNIS. Yes, I did. I had discussions with the Committee staff and by letter of August 11, 1995 to Mr. Ben-Veniste and Mr. Cole, I confirmed our commitment to seek the telephone toll records of Ms. Williams home telephone in Washington, DC. We prepared a letter for Ms. Williams to send to the telephone company, and that was sent on August 12, 1995, requesting those records.

There is subsequent correspondence with regard to the responses that we got from the telephone company, which were somewhat confused in that we were advised that the records for that period, the period of time which we requested, which was July 20, 21, 22, and 26 of 1993 were not available because the records were not kept further back than 18 months.

However, we did not rely upon that and sent the letter asking that a search be made and that confirmation of either the existence or nonexistence of the records be determined.

In September, we were advised that, in fact, the records did exist. Those records were made available to us, and we did provide them by letter to the Committee.

Mr. BEN-VENISTE. Thank you, Mr. Dennis.

Mr. DENNIS. You are welcome.

Mr. BEN-VENISTE. In sum, Ms. Williams, I would like to ask you the same question I asked of Ms. Thomases, and that is whether, at the time you were requested to provide information to this Committee regarding your telephone records, you withheld any information that you had in your possession.

Ms. WILLIAMS. No, I did not.

Mr. BEN-VENISTE. Let me turn to the question earlier addressed to you by Senator Mack with respect to the telephone call which is reflected on your home telephone records at 1:10 a.m. on the 21st

of July. The records reflect a 14-minute telephone conversation between you and Ms. Thomases at her number in New York.

Having received the additional information related to that telephone record, does it refresh your recollection as to whether you had any conversation with Ms. Thomases about any materials which may have been in Mr. Foster's office?

Ms. WILLIAMS. No, it does not.

Mr. BEN-VENISTE. Can you say whether that subject came up in that telephone conversation in the early morning hours following the day of Mr. Foster's suicide?

Ms. WILLIAMS. No, I do not believe that it did. This would have been the first time, I guess, I had talked to Susan after Vince's death.

Mr. BEN-VENISTE. May I suggest, if you have before you the transcript of your testimony before this Committee that we go back, at page 231. It actually begins on page 230 where Senator Mack was questioning you. To save time, direct your attention——

Ms. WILLIAMS. Sorry, it is not in this.

Mr. BEN-VENISTE. Let me save time by reading into the record after Senator Mack goes through certain of the telephone calls reflected in the records which were available.

It says at line 18, "And finally you testified that you spoke to the First Lady sometime during the 21st but you say at no time did the subject of Mr. Foster's files or his office come up."

Now, I realize that contacts between you and Ms. Thomases and the First Lady were probably more in the nature of condolence calls at that point. No one disputes that. On the basis of everything that has been collected and reprocessed and reviewed by you, do you, on the basis of what you have seen, recollect that anything relating to the contents of Mr. Foster's office came up in the telephone conversation?

Since Ms. Williams has provided an answer to that, I would like to direct that question now to Ms. Thomases.

Ms. THOMASES. Could you repeat the question? Since you were talking to her, I wasn't paying the same kind of attention.

Mr. BEN-VENISTE. Do you recall now, on the basis of the additional phone records that reflect a likely telephone conversation between you and Ms. Williams in the early morning hours following Mr. Foster's death, whether the subject of the contents of Mr. Foster's office came up?

Ms. THOMASES. Well, I don't remember that specific conversation, but I do remember my first conversation with Maggie after the death, so it is not that specific conversation. But I remember and I testified before about that first conversation, that it was a very emotional conversation having to do with Vince and all those relationships.

The only thing that came up about Vince Foster's office was the fact that she had gone in there, was her feeling about the couch in that office which she had a lot of memories attached. She also mentioned in that first conversation that Patsy Thomasson had been in the office when she had gone in that office that evening.

Mr. BEN-VENISTE. Did she mention to you why she was in the office, referring to Patsy Thomasson?

Ms. THOMASES. No. She just said that she had been drawn to the office and she mentioned that Patsy was in the office, looking for a note but had found none. But I testified to the nature of that conversation before, although I had not remembered it took place at 1:15 in the morning.

Mr. BEN-VENISTE. Now, Ms. Williams, I believe that the additional information relating to your home telephone records of long distance calls on the 22nd of July have indeed provided you with the ability to refresh your recollection about whether you were, in fact, even in the office on the morning of the 22nd.

If I understand your testimony here this morning, the fact that a telephone call is reflected, placed by you to the Rodham residence from your home at 12:55 that afternoon suggests to you that you were not in your office to receive any of the calls that were listed and were directed to you, perhaps, but about which you had no recollection; is that correct?

Ms. WILLIAMS. That's correct, and let me emphasize the word "suggests" to me since I do not know factually that that is so.

Mr. BEN-VENISTE. I appreciate that.

Now, going to the larger question about which our Senate Resolution asks us to inquire. With respect to the additional records that have been provided through the telephone company, making those records available to all of us, can you tell us whether your recollection is refreshed, Ms. Williams, about whether any direction was transmitted by you, directly or indirectly, to Mr. Nussbaum about how he should decide what standard to apply in connection with the Park Police review of the contents of Mr. Foster's office?

Ms. WILLIAMS. No. The things that I recall in that conversation that I had, I have testified to earlier. Those were the things that were suggested to me. I don't recall more than that.

Mr. BEN-VENISTE. Let me ask the same question of you, Ms. Thomases. Again, whether on the basis of all of the information that has been collected now with respect to your telephone records, Ms. Rodham's telephone records, Ms. Williams' telephone records, is your recollection in any way refreshed or affected in connection with the question of whether you passed information to Mr. Nussbaum, either directly or indirectly, with respect to what standard he should apply in connection with the Park Police request to review information in Mr. Foster's office?

Ms. THOMASES. No. I didn't pass anything to Mr. Nussbaum about that. But there is one thing I would like to say.

Chairman D'Amato, I originally brought up the fact that Mrs. Clinton had called me the morning of the 22nd in an interchange with you during my testimony. It is on page 205 of my testimony. Because I brought up the fact of that call to you before you got the records from—I didn't know the exact time, but I brought that fact up when I testified before you in August starting on page 205.

I made it clear to you at the time that nothing in that conversation, even though I didn't remember all the details, the tone of that conversation had nothing to do with documents.

Mr. BEN-VENISTE. Do you want to read that portion to us, Ms. Thomases?

Ms. THOMASES. You want me to read what he said or what I said?

Mr. BEN-VENISTE. Both. Not everyone in the room has a copy of this transcript, obviously.

Ms. THOMASES. This is Chairman D'Amato saying, "Do you have any idea what time that was? Would that be the call at 7:12, the call to the Rodham Arkansas residence? Would that refresh your recollection?"

The CHAIRMAN. We are talking about 7:12 in the evening?

Ms. THOMASES. I went on to say, "No, I don't think that was the call, Senator. I think I spoke to her earlier in the day that day, but I can't tell you exactly when I spoke to her. I just have a recollection that I spoke to her, and if you want, I can tell you what I recollect speaking to her about."

You said, "Yes, I'd appreciate that."

I said, "I spoke to her about, as I had spoke to Maggie, and I was looking for Bruce to talk to him about, the likelihood that I would not end up coming to the funeral, and I think she and I talked about it."

That was the gist of my conversation with her that morning. I have no recollection of the details, but I, in response to what she asked me, probably told her about my conversation with her husband the night before.

Mr. BEN-VENISTE. Thank you, Ms. Thomases.

Senator SARBANES. I'll yield to Senator Dodd. I think we have some time.

Senator DODD. I briefly thank my colleagues.

To put this in perspective, there may be someone who is not aware of what the testimony was in August or what has gone on over here, the number of weeks and days that we have been involved in these hearings, but something to keep in mind, I think, as we look at all of this.

I have been involved over the years—I was on the Committee that reinvestigated the assassinations of President Kennedy and Martin Luther King and went through a rash—in fact, I still get letters and calls about various theories that people—it has become a cottage industry, as many people know in this country and elsewhere, and that there is a temptation, clearly, if one can, to string a number of pieces of circumstantial evidence together to create the illusions of things going on.

I think it is important for us to remember here we are talking today about two or three phone conversations, as I understand it. I think it is appropriate we do so, that we go back and review the record. I certainly commend the Chairman for wanting to make sure we cover all the areas. I think it is important that be done.

I think it is also important we keep in mind, as I went back over the records here, we are talking about the Chief of Staff of the First Lady. We are talking about someone who is one of the closest friends of the First Lady. We are talking about a set of circumstances in which a person who is close, not just a staff member, but someone who is particularly close to the two witnesses before us, dies in a tragic death. People who talk to each other all the time are in the midst of all of this. So I hope my colleagues will keep that in mind.

We are talking about recollections of conversations. Even today it is more than 2 years old. Some of these conversations are a cou-

ple of minutes long. Some are 10 minutes long. The one clearly the Committee is focusing on is the 14-minute conversation.

It is the first conversation between these two people who have just lost a mutual friend. Frankly, a conversation I might have thought might have been an hour and a half long at that particular moment. But nonetheless a 14-minute conversation where a third person—imagine any of us on this Committee with our friends, someone who had died, apparently a suicide, and the two of us are going to be talking about it.

Are we going to be talking about files and documents the first conversation we ever have with each other when someone has just died? Just common sense would say to me this isn't how normal people function when something like that happens.

I think it is appropriate we look at all of this, but I also hope that common sense will rule here. While we can string particular pieces of information together, that we also step back and take a look and say who are these people, how often do they talk with each other, what are the events which would promote a conversation at this particular point, what was the likely substance of that conversation, particularly a first conversation that the people had with each other.

Again, Mr. Chairman, as I say, people might just be looking at this for the first time, and we can inflate—and I'm not suggesting that's the case—but inflate particular sets of incidences here.

Here we have witnesses, and including the Administration which has been extremely forthcoming, literally, and all the evidence supports that. No evidence at all of trying to hide or conceal information, or make it difficult for the Committee to get to that. The Chairman has a job to do and it is not easy to make sure we move this along, and it happens quickly and so forth. I respect the motivations the Chairman has to move this process along.

I think the Chairman has recognized this, we have had remarkable cooperation from people. To ask them to recall with the kind of clarity that, as I have said many times, I am confident none of us could do with events that transpired that long ago, and to assume that their conversations, given the circumstances that promoted a good part of these conversations, would be riveted on something totally afieled from the major event, the tragic event of someone's death, I just think defies logic. Whatever else is going on, it isn't logical to me that that's what would happen.

I don't really have any particular questions, Mr. Chairman. I have listened with care to the questions that have been raised and the responses given. I am satisfied here that, on the basis of this, there is no evidence that I see that there is some conspiracy here to conceal information. That's not a prepared statement. That's just a conclusion. I am willing to listen to more questions today and more responses, and I can be persuaded otherwise, I suppose, if I hear something else.

But up to this juncture, I see it basically as I have stated it here, and would hope that we could maybe move on at some point here to the other subject matters which are going to take some time on this Committee and move beyond this particular point.

I thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes, I think you have several minutes left. How many minutes left? Two minutes.

Senator SARBANES. I will just make this observation that, in the examination of this matter last summer, we listened to 32 witnesses. We took over 60 depositions. We had 13 days of hearings. I don't think anything shown by the records is inconsistent with the testimony that we received last summer.

Now, we have a difficult question and people say, well, they don't remember, they don't recollect. They are being asked about telephone calls that occurred more than 2 years previously. Maybe a phenomenal memory that could recall all of the phone calls.

In fact, as we explore this thing, we find that although Ms. Thomases, for example, couldn't pinpoint the exact time of the phone call, she, last summer responding before the records were ever obtained and reviewed, said, in response to the Chairman, well, no, I think that phone call was earlier on that day. Of course, it turns out there was a phone call earlier in that day.

As we sort of try to grasp this thing, I think we have to keep that in mind and try constantly to put it in the context of the responses that we receive.

The CHAIRMAN. I'm going to go to Senator Bennett, but before I do, I think, Mr. Chertoff has 2 minutes.

Mr. CHERTOFF. Ms. Thomases, I just want to clarify a couple of things. Mr. Ben-Veniste had gone at great length in repeating testimony or colloquy that occurred in August about a request for records of phone conversations. I have right in front of me a letter to Jane Sherburne, the White House Special Counsel—who I see sitting in the audience—dated June 30, which was before the hearings began, which specifically asked for records of telephone conversations between 5 p.m. July 20 and 5 p.m. July 22 from or to Hillary Rodham Clinton, and which specifically requested records of telephone conversations from or to the personal residences of Margaret Williams. I know these were not directed to you, Ms. Thomases.

But I guess my question—maybe this ought to be to Ms. Williams. Didn't Ms. Sherburne contact you or communicate to you after June 30 that the Committee was specifically asking for these records?

Ms. WILLIAMS. I don't remember. She may have spoken with my lawyer about it. I may have seen it. I guess I never thought that—the personal records of my home just never came to mind.

Mr. CHERTOFF. So the record is clear, this request did not come in the middle of the hearings for the first time. The request was specifically made on June 30 and directed to the White House.

The second quick thing I would just like to cover in the remaining minute before Senator Bennett begins is your testimony during the hearing over the summer, Ms. Thomases.

Are you telling us that your reference to a conversation on the 22nd where you talked to Ms. Clinton about the likelihood you were not going to come to the funeral, are you telling us that's the call that occurred before 7 a.m. Arkansas time when Mrs. Clinton called you?

Ms. THOMASES. I said that I think would be—because I had made up my mind over the night that I wasn't going to go and that it was likely that I told her in the morning.

Mr. CHERTOFF. Didn't you testify at the hearings over the summer that you didn't make up your mind until the next day?

Ms. THOMASES. No. That was the 22nd.

Mr. CHERTOFF. Didn't you testify at the hearings that it wasn't until the day of the 22nd that you made up your mind you weren't going to go to the funeral?

Ms. THOMASES. I don't remember. I probably discussed the problem with her because I was very sensitive to it.

Mr. CHERTOFF. Did you discuss it with her in a call that took less than 3 minutes?

Ms. THOMASES. I might have.

Mr. CHERTOFF. Did you then immediately hang up the phone and pick up the phone to call Bernie Nussbaum?

Ms. THOMASES. I know you think there is a relationship between those two calls.

Mr. CHERTOFF. It is pretty obvious.

Ms. THOMASES. I know you think so. I wanted to get in touch with Bernie because I was going into my office and going into a meeting. I hadn't talked to Bernie yet. You have to put it into this context.

I don't remember making that call, but I want to put it in a context where I think it was. I had not yet talked to Bernie who was my very close friend. His deputy, Vince Foster, had shot himself. I wanted to know how Bernie was doing because he had been working with Vince day in and day out and he had been feeling very good about how things were going and then his deputy goes out and kills himself.

I was worried about my friend Bernie, and I was just about to go into a very, very busy day in my work, and I wanted to make sure that I got to talk to Bernie that day since I had not been lucky enough to speak to him the day before.

Mr. CHERTOFF. I think Senator Bennett has some questions.

OPENING COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Thank you.

First let me make a general observation about memory, and I agree absolutely that memory can play tricks and that phone calls can go out of memory very quickly. If you were to ask me about phone calls I had a week ago, I probably couldn't remember having those phone conversations.

That having been said, if you were to ask me about phone calls around a particularly strong emotional event in my life, I can remember those phone calls exactly. For example, when my father died it was not an unexpected nor an unhappy event. He was 95, he was old and sick, and we were glad to see him released.

Nonetheless, the loss of one's father is an emotional event. I remember who called. I remember when Al Gore called, the Vice President of the United States took the time to call me. I remember the call. I remember what he said, because it was associated with the intensity of that moment. I remember when Strom Thurmond called who served with my father in the Senate and we talked

about that. I remember those calls even though they were years ago.

I find it a little hard to accept the idea that calls surrounding this strong and emotional occurrence can disappear as easily as calls that relate to normal business activities. This is just a comment that I make in response to the comment that my colleagues have made about memory.

Now, Ms. Thomases, when you were here before, you and I had an exchange, and I expressed some bemusement, I suppose would be the proper word, at the difference between the Susan Thomases presented here and the Susan Thomases described to us elsewhere. Just to review that, you recall the comment that was made in the article about you where they said she has the juice and then someone else commented, no, she is the juice.

I pointed out that you have access to the White House that is unparalleled. Bob Dole and Newt Gingrich have to make an appointment to see the President of the United States. You can drop in without an appointment and get into the Oval Office to see him. You have access that folks in Gucci Gulch would give millions of dollars to have and probably would get millions of dollars if they did.

You are tough, you are smart, you are aggressive, you are occasionally abrasive. You are clearly one who takes charge, challenges anybody and, frankly, at a time of crisis you would be the go-to guy, if we were to use basketball terms. When we are down to the last tick on the clock before the buzzer, get the ball into Susan Thomases' hands for a cut-the-nonsense operator who will get the job done.

Now, in your testimony, all of the conversations that you remember were a very different Susan Thomases. You were reaching out to people. You were trying to help them with their grief. No one ever raised any problem where the go-to guy has to be put in motion. No one ever suggested that there was any difficulty that we have to have Susan Thomases, who can keep her head in the midst of this kind of problem when other people perhaps can't. We have a problem, if we want the problem solved, get Susan Thomases on the phone to solve it.

I find a disconnect between the Susan Thomases that I described and that I think is accurate and the person who is spending all of her time in all of these conversations simply making people feel good and helping them through their grief.

To me, that is the significance of this series of phone calls that Senator Mack was talking about, that Maggie Williams calls Little Rock, talks to the First Lady for some 7 minutes, getting her up. But in her testimony here this morning, she doesn't even remember talking to the First Lady because she thought the First Lady might not even be up. That's what she told Senator Mack.

Ms. WILLIAMS. That's not what I said.

Senator BENNETT. Let's assume, and I do, that she talked to Hillary Clinton. Immediately after that conversation, Hillary Clinton calls you, there is a short conversation, the kind of conversation that frankly would fit the picture of the go-to guy. Here is a problem, take care of it, Susan, thank you very much. Immediately upon hanging up, the page goes to Bernie Nussbaum.

Now, I agree with the Senator from Connecticut we shouldn't try to turn this into a JFK cottage industry conspiracy circumstance, but won't you agree with me that that sequence and your pattern of activity on behalf of the Clintons over a long period of time, taking care of tough problems, would make it credible that, if there were a problem, that would be the phone call that would say get Susan Thomases in gear? Short, 3 minutes, here we go. Surrounding the emotion of the event, isn't it logical to assume that your memory would be a little sharper?

I'm not saying that it is not, but I'm asking you, don't you agree that the appearance of this lends credibility at least to the kinds of questions we are asking?

Ms. THOMASES. Senator, I really—I was in a different place. First of all, I spoke to the First Lady after Vince Foster died. She was the one who called me to tell me of Vince's death. So, she and I did have a very intense emotional conversation, which I remember with the kind of clarity that you are describing.

I also remember my first conversation with Maggie. I didn't remember the timing of when it happened, but I remembered the conversation.

The first time I heard about the documents and the activities surrounding Vince Foster's office was when I talked to Bernie Nussbaum some time on the 22nd. I did not——

Senator BENNETT. If I may, because the time is gone, could you focus on that 3-minute conversation and tell us exactly what your memory is of that conversation? Did she, in fact, call you and then you took that 3 minutes solely to tell her you weren't coming to the funeral?

Ms. THOMASES. No. She called me. I don't remember the details of the conversation. But since I had seen her husband the day before and I have to speculate that she asked me how I found him, what I talked to him about and asked me if I were coming with him to the funeral, which was his intent that I fly with them to Little Rock the following day. It was at that point that I believed that I first raised with her the possibility that I didn't feel well enough to go to Little Rock, and I told her that I would get back to someone before the end of the day and confirm that decision.

Senator BENNETT. So I'm absolutely sure, and I apologize, but I thought I heard from your comment you are speculating that that's what the conversation was?

Ms. THOMASES. That's exactly what I am saying. I have no recollection of the specifics of the conversation, except that I think that it was about my decisionmaking process. Because I had——

Senator BENNETT. You have no recollection as to why you immediately paged Bernie Nussbaum after the hanging up from that prior call?

Ms. THOMASES. No. I think I told you already, I told Mr. Chertoff that I think I reached out to him because I hadn't spoken to him. I was about to leave where I was staying to go to my office, and I knew that I was going to have a long morning of conference calls so that I would not be available to have a conversation with Bernie. I went to—I also knew that I had an important luncheon meeting that day. I also knew that I had to be back in New York for a 5:30 meeting that afternoon.

I was under a lot of pressure from work——

Senator BENNETT. It is my understanding that when you made the page to Bernie Nussbaum, you left the hotel number as the return number?

Ms. THOMASES. That's right.

Senator BENNETT. You stated that the reason you paged that early is that you had to leave the hotel for a very busy day. Those two don't connect up.

Ms. THOMASES. If I paged him at 8 a.m. and knew I was going to be in my hotel at 9 a.m., if he called back between 8 a.m. and 9 a.m., he could have actually called me back, calculating how long it takes for me to get from my hotel to my office, he would have had to call me back within the next half hour or 45 minutes.

Senator BENNETT. My time is up, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes, let me suggest, initially Counsel had indicated that the witnesses might need some time. We are going to ask the witnesses whether it would be appropriate to take a 5-minute break?

Ms. THOMASES. I would appreciate it.

The CHAIRMAN. We will take a 5-minute break.

[Recess.]

The CHAIRMAN. At this time, the Chair recognizes Senator Sarbanes with 10 minutes.

Senator SARBANES. I yield to Senator Moseley-Braun.

OPENING COMMENTS OF SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman.

I have been following this rerun here and trying to keep up with what is being said and what is being implied.

I guess the first thing that strikes me is with regard to the conversations that occurred between the 21st and the 22nd of July 1993, there is some suggestion that the First Lady would have called Ms. Thomases in order to relay a message to Mr. Nussbaum. I am reminded and I would like to refer to and ask Ms. Thomases specifically a question.

In his testimony, Mr. Nussbaum responded to Senator Boxer who asked the question, this is kind of cute actually, "Do you ever take instructions from Susan Thomases?" I wish I could remember Bernie's face or remember Mr. Nussbaum's face when that question was asked, but I don't have that recollection. I want to ask you your recollection.

His response was, "No."

Senator BOXER. Do you ever take instructions from Susan Thomases?

Mr. NUSSBAUM. No.

Senator BOXER. If Mrs. Clinton wanted to tell you something, would she go through an intermediary?

Mr. NUSSBAUM. Not likely.

Then he goes on and says he could talk to her, et cetera. All of this is in the official record.

Ms. Thomases, I guess my question to you is kind of the converse of that. Had the First Lady ever—did you act as an intermediary with Mr. Nussbaum?

Ms. THOMASES. I didn't. I didn't in this case, and I don't often do it.

Senator MOSELEY-BRAUN. Do you agree with his recollection or his assertion that he and the First Lady have a relationship and they are very candid and talk to each other directly?

Ms. THOMASES. Yes, they did and they still do.

Senator MOSELEY-BRAUN. I thought it was kind of important to put that into the record to refresh everybody's recollection that Mr. Nussbaum spoke to this issue, and he categorically denied that he needed an intermediary. I take from your response that you deny that he needed an intermediary as well.

The second thing is we have gone through all this about getting these records and reviewing and going over and asking even further questions about records that we had. Again, the implication that a phone call was made to Ms. Williams, and Ms. Williams then called the First Lady, and the First Lady then called you, and then you called Mr. Nussbaum, and this gets to be a convoluted set of stuff, that I suppose next we will have you phoning the Pope or something.

But I just want to ask kind of a conclusory, bottom-line question, which is, in view of the records and in view of the questions that have been asked of you today, do you recall talking to the First Lady about the search of Vince Foster's office?

Ms. THOMASES. I said in my first statement and I repeat it today, which is basically this, I never received from anyone, nor did I give to anyone any instructions involving the contents of Vince Foster's office, period.

Senator MOSELEY-BRAUN. OK. I'm going to ask the question another way. Do you remember having a conversation about the documents in Vince Foster's office?

Ms. THOMASES. Ever?

Senator MOSELEY-BRAUN. No, I mean in connection with these phone conversations of the 22nd.

Ms. THOMASES. Absolutely not.

Senator MOSELEY-BRAUN. In connection with—

Ms. THOMASES. Except with Bernie.

Senator MOSELEY-BRAUN. Except with Bernie, which you have testified to that already.

Ms. THOMASES. Yes.

Senator MOSELEY-BRAUN. And with regard to these conversations which I just described, do you have a recollection, do you recall talking with the First Lady about Whitewater, in connection with the death of Vince Foster?

Ms. THOMASES. I have said before and I say again that Whitewater was not on my mind at that time, and I don't know what was on the First Lady's mind. But she never raised anything about Whitewater with me that I can recollect.

Senator MOSELEY-BRAUN. You never raised anything with her?

Ms. THOMASES. No, it was not on my radar screen, to my recollection, at that time.

Senator MOSELEY-BRAUN. OK. I think it is important also to clarify with Ms. Williams since you are here again for the same thing, I want to ask you the exact same questions in the exact same order again with regard to the conversations of the 21st and 22nd. Do you recall talking with the First Lady about the search of Vince Foster's office?

Ms. WILLIAMS. No, I do not, although I did indicate in my previous testimony that I spoke with the First Lady about moving documents into the residence late in the afternoon of the 22nd.

Senator MOSELEY-BRAUN. All right. Do you recall talking with the First Lady about Whitewater in connection with Vince Foster's death?

Ms. WILLIAMS. No, not at all.

Senator MOSELEY-BRAUN. Mr. Chairman and Senator Sarbanes, again, I think there is nothing there from what I can see. We have gone over this ground. We have plowed it, we have replowed it, and there just doesn't seem to be any crop there to harvest.

I think, frankly, that we are calling these witnesses back to go over the same ground that we have been over before after a person who has given their answers, these women have given their answers time and time again under oath to this Committee. I really think we are bordering on cruel and unusual punishment to keep calling them back to ask the same questions and to get the same answers.

Not only cruel and unusual punishment to them, Mr. Chairman, may I submit, to the Members of this Committee as well. That is another issue we can discuss. I have no further questions.

Thank you, Senator.

The CHAIRMAN. Thank you, Senator.

Senator SARBANES. I would like to make an observation about the reference Mr. Chertoff made to the letter that was sent to Jane Sherburne where they requested additional records from the White House and former, present, or former White House personnel. Then it says, "All records of telephone conversations from or to the personal residences of Bernie Nussbaum, Margaret Williams, and Patsy Thomasson."

It is my understanding that these people did not have those telephone records in their possession at that time; is that correct? Did you have telephone records in your possession at that time?

Ms. WILLIAMS. No, I did not.

Senator SARBANES. Now, later it occurred to Counsel here and it was discussed amongst us at the conclusion of the hearings that we ought to go to the phone company for records. I think there is a gap here in the request, I have to say to you, in terms of that you could have been forthcoming to this request and not have taken the step of going to the phone company to seek records which the Committee subsequently requested.

The Committee did not specifically develop that in its initial request. We subsequently developed it, made the request, and received voluntary compliance on everyone's part to provide those phone records.

We have the phone records, and on the basis of those phone records, the additional phone records, these questions are now being put here this morning.

In fact, Mrs. Rodham, there was no request, initial request, I don't think, for the phone records from her home or any way to suggest that those ought to be obtained. That, of course, was also covered on the request that the Committee made on August 9th which both sides joined in putting forward.

So, I think it is important to understand that. We may have been deficient in not making it very clear we wanted people to go to the phone companies in order to get records. Once we made that clear, people voluntarily cooperated and we did, in the end, obtain all of these records.

Now, I want to put a question to you, Ms. Thomases. You had not talked to Bernie Nussbaum prior to placing that call for him on the morning of the 22nd when you tried to reach him; is that correct?

Ms. THOMASES. I may have seen him when I was rushing through the White House the day before, but I don't remember having a conversation with him. We are friends and I wanted to have a conversation, one on one, with him.

Senator SARBANES. You were making the call in order to, in effect, console or talk with Bernie in the face of the suicide of his Deputy Counsel; is that correct?

Ms. THOMASES. Yes.

Senator SARBANES. Well, I have to say, Mr. Chairman, no matter in which sequence these calls were made, someone conceivably on the Committee could be trying to find some plot or conspiracy.

It is also a reasonable hypothesis that these were two totally independent calls. Then you say one was made right after the other. Of course, one could have been made right before the other. I take it Susan Thomases was making these calls before she went into the office and started a day of work.

So, you can have all kinds of speculations, but there is some perfectly innocent views of this situation as well as a conspiratorial or a plotting view, and I think we need to keep that in mind.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Would my colleague yield for one moment?

Senator SARBANES. Certainly.

Senator DODD. I wasn't going to say anything about this, because the witness didn't respond to it, and I think I know why, I want to respond a bit.

I let this Committee know in the past. I know Susan Thomases. I have known her a long time. My colleagues know that. We have never worked together in any professional capacity, any campaigns or anything else. We just know each other.

My colleague from Utah raised the issue of how someone who has the reputation of being a good, strong person who could also be a person who might care about somebody else. I know a lot of people I serve with who I would call tough people, strong people, get-the-job-done kind of people who also can be tremendously compassionate when crises arise and tragedies occur. It is not inconsistent for someone who is a strong individual to also be a compassionate individual.

The fact that the witness didn't respond to the question, because I think it is rather awkward and difficult, the implication—I know he didn't mean it necessarily—that if you are a strong individual you can't care about something that happens to other people.

If I didn't know the witness, I might just let it pass. But I happen to know this person very, very well, and I know her to be a person who cares deeply about other people.

Ms. THOMASES. Thank you, Senator.

Senator DODD. I didn't want the moment to pass. I wasn't going to say anything. But in fairness to her, it ought to be made clear that what I think may be a little more descriptive in terms of how tough she is, but nonetheless, I would argue with that characterization as well, but that is not my point. My point is that people can be strong individuals and also very caring individuals, and this witness happens to be one of those people.

The CHAIRMAN. I would like to make the observation, if I might, as my friend and colleague, Senator Sarbanes, points out, that views have been made as it relates to the series of phone calls that started at an unusually early hour and that went from the First Lady's Chief of Staff to the First Lady, from the First Lady's home to Ms. Thomases, from Ms. Thomases to Bernie Nussbaum's pager, recognizing that she said she had a long, tough day and therefore wanted to reach out, had conferences scheduled, but what seems to me rather relevant is the testimony of Mr. Neuwirth—and we are not talking about just anybody, we are not talking about a young man who was called upon to carry some records upstairs. We are talking about the Assistant to the White House Counsel—he says, in essence, his testimony was very clear, that Bernie was told—and I am paraphrasing and I will ask later on that the direct testimony be read into the record—Bernie was told that Mrs. Clinton was disturbed about the manner in which the investigation was taking place. I will read it, in fairness.

What I said was that my understanding was that Mr. Nussbaum had understood that Ms. Thomases and the First Lady were concerned about the prospect of unfettered access and I don't know what the basis was for that concern.

This is page 72 of Mr. Neuwirth's testimony.

Mr. Nussbaum had understood obviously. Mr. Nussbaum let Mr. Neuwirth know that Ms. Thomases and the First Lady were concerned about the prospects of unfettered access. So we don't come—and that's why it is that when we get this information about these phone calls and the chain of events that then follows which leads up to a rather dramatic confrontation between the White House and the Justice Department, to the extent that you have the No. 1 person at the Justice Department calling Bernie at night saying to him—talking about the Deputy Attorney General—saying Bernie, are you hiding something.

Now, you know, it is not illogical, and if you want to say it is just happenstance and circumstance that this series of calls took place—Bernie Nussbaum's pager, 9 o'clock, Susan Thomases leaves a message. 10:48, Susan Thomases, 3 minutes. 11:04, Susan Thomases, 6 minutes. 11:11 Susan, McLarty, 11:37.

I have to tell you it is difficult to believe that all of these calls now were out of compassion, and believe me I understand compassion, but that's why, when we come to this, we raise these questions. These are the questions in my mind.

Senator BENNETT. Mr. Chairman, may I make a quick statement?

The CHAIRMAN. I will give her an opportunity to respond.

Senator Bennett.

Senator BENNETT. I thank my colleague from Connecticut for making the point that he made, and I apologize for any inference

that I may have made in my characterization of Susan Thomases, whom I do not know except by her press clippings.

Senator DODD. One should not be known by that alone.

Senator BENNETT. That is a very, very appropriate point. I still intend to pursue some of these things vigorously, but I appreciate my colleague from Connecticut catching that nuance and I thank him for it and for any distress that I may have left with the witness, I apologize.

The CHAIRMAN. Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Ms. Thomases, I lightly touched, before when you were here, on what Senator Bennett went into today, your juice and the spilling thereof. So I would like to ask some questions and I would like, if I may, very quick answers because he has me on a clock and not an hourglass.

You remembered the call from the First Lady on the night. Then the following morning, at 1:10 that morning, Maggie Williams called you. You don't remember that conversation? You talked to her for 14 minutes. You're telling us you don't remember what that call was about?

Ms. THOMASES. I said that I remember the substance of my first conversation with Maggie Williams after Vince Foster's death. I do not specifically remember that it took place at 1 a.m.

Senator FAIRCLOTH. You get a lot of calls at 1 a.m.?

Ms. THOMASES. Senator—Maggie—yes, I do. Ask my husband.

Senator FAIRCLOTH. All right. If I need you, I'll call you at 1 a.m.

Ms. THOMASES. Feel free.

Senator FAIRCLOTH. I just learned in the last 24 hours that you were in the White House on July 27. Put the screen up. Now, Mr. Barnett, the Clinton's private attorney, was also there at the same time. Did you see Mr. Barnett while you were there?

Ms. THOMASES. I have no specific recollection of being at the White House on the 27th. Looking at these records, it looks like I was.

Senator FAIRCLOTH. You were there for 6 hours.

Ms. THOMASES. Senator, I don't know exactly how long I was there. Given what happened on the 21st, when it also had a record of my being there for 6 or 7 hours and I know for sure that I was actually at my Washington office for a significant part of that day, I don't know that I was there the full time, because sometimes I come and leave and come back.

Senator FAIRCLOTH. Well, according to this, they say entering and exiting and that means kind of coming and going, doesn't it? Do you think the Secret Service people had—the clock wasn't right? You were there 6 hours according to them.

Ms. THOMASES. I don't know that, but I don't remember having spent a full day like that at the White House.

Senator FAIRCLOTH. Did you see Mr. Barnett there?

Ms. THOMASES. I don't remember that day particularly.

Senator FAIRCLOTH. Were you in the residence while you were there?

Ms. THOMASES. I don't remember that day in particular. I have not thought about it. This is the first time this day has been raised with me.

Senator FAIRCLOTH. Do you know Diane Blair?

Ms. THOMASES. Yes, I know Diane Blair.

Senator FAIRCLOTH. Well, I was going to ask you if she was there, but if you don't know if you were there, I guess you don't know if she was there. But I'll ask the question anyway. Do you remember seeing her there that morning?

Ms. THOMASES. I don't remember the day of the 27th, and whether Diane Blair was there.

Senator FAIRCLOTH. But you spent 6 hours there, according to the Secret Service, and have absolutely no recollection of it; is that right?

Ms. THOMASES. I don't have any specific recollection of it, no.

Senator FAIRCLOTH. How someone can spend 6 hours at the White House and have no recollection of it is beyond me, especially someone with your reputation for brightness and sharpness and remembering.

Let me ask you another question. When did you first see Vince Foster's suicide note?

Ms. THOMASES. I never saw Vince Foster's suicide note.

Senator FAIRCLOTH. Have you ever talked with Mrs. Clinton about Vince Foster's involvement with the Travel Office firing?

Ms. THOMASES. Have I ever talked to——

Senator FAIRCLOTH. Mrs. Clinton. Did you discuss the firing, the problems thereof and this man, Harry Thomasson? Did you ever discuss that with Mrs. Clinton?

Now, Harry Thomasson, Mrs. Clinton or the whole Travelgate thing, did you discuss that with them?

Senator SARBANES. Mr. Chairman, Travelgate is not part of our charge. In fact, the House is looking into Travelgate.

The CHAIRMAN. Well, I understand it's not part of our charge, but I'm going to give the Senator the latitude to pose that question. And given the fact that Vince Foster's note did relate or at least referred to it, I'll allow it for limited purposes.

Go ahead, Senator.

Ms. THOMASES. Could you restate the question, please?

Senator FAIRCLOTH. Have you ever or did you discuss with Ms. Clinton the Travel Office firing, her role in the Travel Office firing and Vince Foster? Was there any discussion with you in that?

Ms. THOMASES. Can you give some timeframe around that?

Senator FAIRCLOTH. At any time.

Ms. THOMASES. I may have discussed it with her, but I don't remember how proximate that was to Vince Foster's death.

Senator FAIRCLOTH. Do you remember any discussion with Harry Thomasson in connection with the firing?

Ms. THOMASES. I may have heard——

Senator SARBANES. This is really——

Senator DODD. We're getting beyond here. I understand the point of——

Senator FAIRCLOTH. Let me go on.

Senator DODD. There has to be some connection made. What's the nexus here?

The CHAIRMAN. Sure. Let's give the Senator an opportunity to continue.

Go ahead, Senator.

Senator FAIRCLOTH. It's very difficult to make connection, Senator, when somebody spends 6 hours at the White House and does not remember it or have any recollection of it.

Senator DODD. Those are two different issues.

The CHAIRMAN. I think the Senator is raising the point, did that come up.

Senator FAIRCLOTH. I'll move to Maggie Williams.

Ms. Williams, you received a called from Ms. Clinton at 10:13 p.m. on the evening of July 20; is that right?

Ms. WILLIAMS. I do not know the exact time, but that sounds about right.

Senator FAIRCLOTH. Yet before that, you spoke with someone in Arkansas for 26 minutes. Would you tell me who that was?

Ms. WILLIAMS. My friend.

Senator FAIRCLOTH. Well?

Ms. WILLIAMS. What I don't want is for my friend to have every press person in America calling them now because it is a personal friend of mine, people that I lived with during the campaign, and suffice it to say that we talk often and we talked that night.

Senator FAIRCLOTH. Did you know that Mr. Foster was dead at that time?

Ms. WILLIAMS. No, I did not.

Senator FAIRCLOTH. Ms. Williams, records show that the alarm went off—I mean, in other words, it was cutoff—in Vince Foster's office at 10:42 p.m. on the night of Mr. Foster's death and you weren't there. Follow me? You talked with the First Lady for 16 minutes at 10:13—at 10:13 you talked to the First Lady for 16 minutes. You hung up at 10:29 p.m.

Now, the alarm was switched off in Foster's office at 10:42 p.m., so that means that within 10 to 15 minutes, you hung up from the First Lady and cut the alarm off in Vince Foster's office.

Is it still your story before this Committee that the First Lady did not instruct you, never suggested that you go to the White House and to Vince Foster's office and get documents out that you were seen leaving with by the uniformed Secret Service people?

Ms. WILLIAMS. Could you repeat the question?

Senator FAIRCLOTH. Did the First Lady not tell you to go to the White House and Vince Foster's office?

Ms. WILLIAMS. I mean about the whole timing.

The CHAIRMAN. I think the Senator said that starting at—

Senator SARBANES. Let Senator Faircloth state it.

Senator FAIRCLOTH. You talked to First Lady for 16 minutes at 10:13. You hung up at 10:29. Now, you had the alarm cutoff in Vince Foster's office at 10:42, which gave you roughly 13 minutes to go from hanging up from the First Lady—

Ms. WILLIAMS. At my house.

Senator FAIRCLOTH. At your house, to get to the White House and in Vince Foster's office. Now, are you contending that the First Lady did not instruct you in that 16-minute conversation to get to the White House and to get into Vince Foster's office?

Senator SARBANES. What's the basis for the assertion that Ms. Williams turned off the alarm at 10:42?

Senator FAIRCLOTH. Sergeant O'Neill saw the alarm cutoff, but it's on—saw Maggie Williams in the office at that time.

Senator SARBANES. No, no, no, that's not——

Senator FAIRCLOTH. Yes, he did.

The CHAIRMAN. First of all, I think the question is——

Senator FAIRCLOTH. Cut the alarm off and Maggie Williams was there shortly thereafter, so we're talking about a time lag of 15 minutes, 16 minutes. Now, this is the testimony of the Secret Service agent. The alarm was cutoff and she was there.

The CHAIRMAN. At or about that time, there was testimony that Maggie Williams was in the office.

Ms. Williams, would you respond to the question, which really boiled down to did the First Lady instruct you to go to the office? Because you ended a conversation at 10:29 and you're there at approximately 10:42 or thereabouts, that's the question, again. Did the First Lady instruct you to do that?

Ms. WILLIAMS. As I testified before, no.

Senator FAIRCLOTH. She did not instruct you to. Well, why did you decide in the short span of about 15 minutes, and don't—did you have any particular reason why you went to the White House and Vince Foster's office?

Ms. WILLIAMS. If you will review my transcript from the last testimony, what I said was I knew that I was going to go somewhere and I decided to go to the White House. Other people were gathering at the White House, too.

Senator FAIRCLOTH. Were the other people in Vince Foster's office? You got there pretty quick, too, to Vince Foster's office. You didn't just go to the White House. You went to Vince Foster's office.

Ms. WILLIAMS. The first place I went upon arrival to Vince Foster's office was Mark Gearan's office, as I testified before.

Senator FAIRCLOTH. You returned to your house after you left the White House and Vince Foster's office, all of this within an hour and 30 minutes here, you called the First Lady, you talked to her. You went straight to the White House. You were in Vince Foster's office, you were seen, by the Secret Service people, removing documents.

Then you went back home, and at 1 a.m., roughly 12:56, almost midnight in Arkansas, you again called the First Lady.

Ms. WILLIAMS. Yes.

Senator FAIRCLOTH. What did you call to tell her?

Ms. WILLIAMS. I called to talk to her about Vince's death. He was our friend.

Senator FAIRCLOTH. You didn't call to say I've been in Vince Foster's office and I've got the documents, they're safe, I moved them; put them over in my office? You didn't tell her anything like that, and you can go to bed and sleep well tonight because I got them? Did you tell her that?

Ms. WILLIAMS. No, I did not.

Senator FAIRCLOTH. Nothing related to that?

Ms. WILLIAMS. No, I did not.

Senator FAIRCLOTH. Mr. Chairman, let me ask one more question. I see the clock.

The CHAIRMAN. Go ahead.

Senator FAIRCLOTH. We have danced through this—one question here and I'll find it.

This is the question to both of you, Ms. Williams or Ms. Thomases. On the night of the 20th, the third call that Mrs. Clinton made after she called you was to a number, a Washington area code, 202-628-7087, and she talked to this number for 10 minutes. The number is now disconnected and no one seems to know who it belongs to. Do either of you know who this number belongs to or who the call could have been to?

Ms. WILLIAMS. No.

Senator FAIRCLOTH. Mr. Chairman, we have been going at this now for some time, and not to oversimplify it, but a lot of it has been dancing through the daisies. We ask questions for 6 hours to a very erudite lawyer who does not remember she was in the White House. Ms. Williams remembers no telephone calls.

The answer to this thing, the answer to the problem here, and we need to quit dancing, is to call the First Lady. We should invite her to come with the hope that her memory is better than Ms. Thomases' or Ms. Williams'. I would have to assume it is. It would be hard for it to be worse. I think we need to invite her to come, and if she will not come, we need to subpoena the First Lady and clear this up once and for all. Stop the dancing through the daisies and get on with the investigation.

The CHAIRMAN. I appreciate the Senator's frustration and to a certain extent I too, and I think a number of the Committee Members on both sides for various reasons, share our frustration as it relates to the telephone number that the Senator puts forth, 202-628-7087. Apparently that is a number that switches calls to other numbers.

We have not been able to ascertain the destination of that call, but that would have been about an hour after Maggie Williams had completed her initial conversation with the First Lady.

So we have had difficulty obtaining the records because we didn't issue subpoenas initially. I think that probably was our own shortcoming because we did not want to create an appearance that we didn't think that the people in the White House and others were cooperating, and so we ran into this unfortunate situation.

I will entertain your proposal as it relates to the First Lady. We will take that under advisement.

Senator BENNETT. Mr. Chairman, could I ask, regarding this phone number, which I haven't heard of before, do we know who made the call to the number?

The CHAIRMAN. No, we don't.

Senator FAIRCLOTH. The First Lady made the—

Mr. CHERTOFF. Mr. Chairman, the number comes from the records of the Rodham residence, is what we're told by the phone company. Someone from the staff called the phone company, this is a number that, first of all, is no longer in operation, it's disconnected.

At the time we are talking about, the number was not a number that ends in a residence or office. It deflects the caller, bounces the call to another number, and evidently the phone company tells us that there's no way of determining from this number who the ultimate recipient of the call is.

Senator BENNETT. We don't know who initiated it; we just know it came from the Rodham residence?

Mr. CHERTOFF. We don't know who it went to.

Senator BENNETT. We don't know who it went to.

Mr. CHERTOFF. All we know is it went to a phone number and all that phone number does is it bounces the call to another phone number, but it's impossible for the phone company to tell us, so they represent to us, who that secondary phone number is.

Senator BENNETT. So it is an electronic answering service of some sort?

Mr. CHERTOFF. Not even an answering service. It's an electronic service that takes a call and bounces it to another number so that you can't tell from the record of the caller who the recipient of the call is.

Senator BENNETT. Call forwarding, something like that?

Mr. CHERTOFF. Something like that.

Senator FAIRCLOTH. Mr. Chairman, brief word. I hope you will take into consideration, and I hope the First Lady, without having to be subpoenaed, will view and review what we are doing here and see the problems we are having and would want to come down and explain very clearly and very succinctly what happened, what went on and clear the entire matter up once and for all. I would hope she would come at our invitation and not require a subpoena.

Senator SARBANES. Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. From almost the very first day we began, Senator Faircloth has been calling for bringing the First Lady in. I can't imagine anything that would more politicize these hearings. There's really no basis to bring her here. His request, I must observe, was made before we began collecting any testimony or virtually before we began collecting any testimony. It's been renewed, renewed from time to time.

And I know he very much wants to have a political circus here, but I think the Committee ought to work very hard to avoid that and conduct a proper and thorough and fair inquiry with some sense of standards and some responsibility. I just want to make that point.

Senator FAIRCLOTH. May I reply to the Senator from Maryland? From the very first, you are right, the first day of testimony, it was obvious that we were going to get convoluted answers and not answers. Every hearing every day since the first day has further confirmed my conviction that if we were going to get at the truth and get at the answers, we needed the First Lady. If anybody can think of any reason why she should not come down here and give us straightforward testimony, I'm not aware of it.

Senator SARBANES. Well, the first day we had the three Park Police, not highly relevant to the point you're raising, and right from then you started this call for the First Lady.

Senator FAIRCLOTH. I didn't start on the first day. The first time that we had the White House staff testify was when I called for the First Lady, not the Park Police.

Senator SARBANES. Your objective has been clear right from the beginning, and I think it's an effort to politicize the whole inquiry.

The CHAIRMAN. I think that Senator Faircloth has made known his view. He believes that some of the witnesses have not come forth with the candor that we might expect. I am paraphrasing.

No one can speak for Senator Faircloth. I am not trying to do that. He does believe and he has made known early on that he thought that the First Lady might clear this up.

As the Chair has indicated in the past, it is not my inclination or my desire to go forth in such a manner unless there is absolutely clear and convincing facts that necessitate calling the First Lady. I think he has modified his request.

Again, my inclination has been from the beginning that I do not want to lead us down a road that would be anything other than gathering the facts in a manner consistent with the charge to this Committee from the Senate.

We are going to proceed, as painful as it may be at times, and I recognize that, to the Members of the Committee, and maybe to the general public and certainly to some of the witnesses, we have an obligation and we are going to fulfill that obligation.

Yes, Senator.

Senator FAIRCLOTH. Mr. Chairman, this would not be unprecedented. When Senator Sarbanes was on the House Judiciary Committee, did not President Ford testify before that Committee?

Senator SARBANES. President Ford testified as to the basis of giving the pardon to Richard Nixon.

Senator FAIRCLOTH. He testified.

Senator SARBANES. At his request.

Senator FAIRCLOTH. All right. Well, we want Mrs. Clinton at our request.

Senator SARBANES. Well, that's a very different thing.

The CHAIRMAN. Senator Sarbanes. It's your time.

Senator SARBANES. Senator Dodd.

Senator Moseley-Braun.

Mr. Chairman, I don't have any questions.

The CHAIRMAN. Let me—I just have—Senator Bennett, do you have any?

Senator BENNETT. Thank you, Mr. Chairman.

I would like to, if I could, just pursue what we were talking about before with Ms. Thomases.

You testified, and I can understand, that you had a busy day that day scheduled in New York. Tragedy hits us, does not accommodate previous schedules, and you have a schedule that you have to keep, however much you might like to stop everything else and focus on it. You have clients in your New York office and you have, as I recall, a trip already set to Washington for that afternoon.

So against that backdrop of a busy legal schedule from a busy lawyer, you have the call from Mrs. Clinton at 7:57 a.m. That takes 3 minutes. That takes us to 8 o'clock. At 8:01 you page Bernie Nussbaum, leaving the hotel number. You said you figured you would be there for another half hour to 45 minutes, if he calls back in that time. At 9 o'clock you call Maggie Williams and leave a message for her. Was that from the hotel or from your office or do you recall?

Ms. THOMASES. I don't recall. I don't recall.

Senator BENNETT. Do we have anything that would indicate one way or the other where that was from? Not that it's particularly relevant, but I just want the record to be complete as we go through this process.

All right. At 10:48 a.m., you put in a call to Mack McLarty. Presumably you did not talk to him on that occasion.

Ms. THOMASES. I don't believe I talked to him at all on the 22nd, although the phone records show that I tried repeatedly to reach him.

Senator BENNETT. Yes. The phone connection was for 3 minutes, so you talked to somebody for 3 minutes, maybe telling them you wanted to talk to Mack and why that was and maybe some expressions of grief and so on in that 3-minute period.

Ms. THOMASES. Also to find out when he would likely be back.

Senator BENNETT. OK. So you talked to Mack McLarty at 10:48 for 3 minutes or talked to his office rather for 3 minutes. I'm assuming these calls were all made from your New York office?

Ms. THOMASES. No, they were made from my Washington office. I was in Washington on the 22nd.

Senator BENNETT. Oh. I thought you——

Ms. THOMASES. On the 21st I was in New York. On the 22nd I was in Washington.

Senator BENNETT. Oh, these are all Washington?

Ms. THOMASES. Yes.

Senator BENNETT. So the hotel was in Washington?

Ms. THOMASES. Washington.

Senator BENNETT. I'm sorry. I'm glad to get that straightened out. I had assumed it was in New York.

Ms. THOMASES. In New York, I live in my own home.

Senator BENNETT. OK, fine. Thank you, I appreciate that.

So now we come to the 11 o'clock hour. At 11:04, you talked to Maggie Williams for 6 minutes.

Ms. THOMASES. I testified before that I talked to Maggie Williams' office, and I said at that time while I remember talking to Maggie, while I thought I remembered talking to Maggie that day, I didn't necessarily talk to her because usually I don't call Maggie at that number. That is the First Lady's central number, and when I used to call Maggie, I would call her on her direct line. It is not her direct line.

Senator BENNETT. So you think this 6-minute conversation was with a member of her staff?

Ms. THOMASES. Yes, or I may have asked them to transfer me to someone else in that office.

Senator BENNETT. I see. But that was the White House.

Ms. THOMASES. Yes.

Senator BENNETT. Presumably Maggie Williams is at home, because her earlier call to Little Rock was from home, and her later call that comes during the lunch hour to Little Rock was from her home.

Ms. THOMASES. I just learned that sitting here today, sir.

Ms. WILLIAMS. Can I just——

The CHAIRMAN. I might make an observation to the Senator. That is not necessarily the case. If you're—we're going to check out the records as it relates to time. The reason I say that is it very

well could have been a credit card call to Little Rock with the call being billed to the personal residence. I think that's an open question so——

Senator BENNETT. Ms. Williams was about to respond. Is that indeed the case? Was it a credit card call?

Ms. WILLIAMS. No. I just wanted to interject here, given how things are, that that was pure speculation. I would not hazard to say I was absolutely, positively in my house. I said, looking at my schedule and looking at the fact that there were several calls later from my house, that it appears to me I was at home. But I want to be very clear before we start using this as a fact.

Senator BENNETT. I appreciate that and accept that correction.

These calls are bracketed by your early morning call to Mrs. Clinton, Mrs. Clinton—I'm picking it up from my colleague here—Mrs. Clinton in Little Rock.

Ms. WILLIAMS. That's right.

Senator BENNETT. Then your lunch hour call to Mrs. Clinton, also from your home.

Ms. WILLIAMS. Exactly, right.

Senator BENNETT. So if you were in your office, you went back home for lunch.

Ms. WILLIAMS. Right.

Senator BENNETT. All right. So Ms. Thomases, 11:04, you talked to someone in Maggie Williams' office in the White House for 6 minutes, which takes us to 11:10. At 11:11, you call Mr. McLarty's office. Do you recall whether you got him or not?

Ms. THOMASES. As I said before, I do not believe, and I went over in my August testimony, I don't believe I actually reached Mack that day.

Senator BENNETT. OK. You call him at 11:11. That phone call lasts 3 minutes, which takes us to 11:14. At 11:16, you called Mack McLarty's office again. Do you have any recollection as to why you had to call back, that there was something that you had forgotten in the first conversation with his staff that you needed to call back virtually 2 minutes after you had hung up?

Ms. THOMASES. I have no recollection of what happened in those conversations. Maybe his secretary—and this is totally speculation—perhaps his secretary told me that he was going to be back in a minute so I called back, but I don't remember ever speaking to him that day.

Senator BENNETT. OK. So that takes us to 11:17. 11:37, 20 minutes now has elapsed.

You now call Maggie Williams again at the White House, talk for 9 minutes. Do you have any recollection of that phone call?

Ms. THOMASES. I don't specifically recollect that phone call. In spending some time pressing myself to recollect when I spoke to Maggie on the 22nd, my clearest memory is speaking to her at the end of my day when I was in New York, and between arriving in New York and going to a late afternoon meeting in New York.

So it's that call that sort of sticks in my mind, that's a likely time that I spoke to Maggie that day.

Senator BENNETT. Well, again, this is in the White House, not at her home. So you've had one conversation with Maggie Williams' office for 6 minutes, then two quick conversations with Mack

McLarty's office immediately following that conversation with Maggie Williams' office.

There's a 20-minute interval and then 9 minutes with Maggie Williams' office in the White House. You hang up at 11:46, and then at 11:50, 4 minutes later, you call back to Maggie Williams' office for another 4 minutes.

Then in the lunch hour, there is a call from Maggie Williams' residence to Little Rock that presumably did not make a connection because it only lasted for a minute. Then a call from the White House switchboard, we don't know who, to Little Rock that lasted longer, at 1:25.

Now, it may be that none of these are connected, it may be that there's coincidence, but I must come back to my observation before, there is a pattern here that looks like the go-to guy is taking care of business, and a series of calls are made to key players.

If the key player isn't in, then the other player—if you want to construct this, it certainly fits the pattern—the other player is notified, placed the call here, wasn't in. Another conversation takes place, call back, long conversations, not leave a message.

These are not consoling conversations because that's already taken place. They're too short for that. The pattern of this series of phone calls is the pattern of somebody who has a problem to solve and people to report to or people to stimulate. Do you not agree that that pattern could well be interpreted that way? If you have a different interpretation, I'd love to hear it.

Ms. THOMASES. As I said when I testified in August, I was reaching out for Mack and I was anxious to speak to him because he had a very special relationship with Vince, and I wanted to talk to him. Unfortunately I do not believe that I was able, nor can I remember, that I was able to reach him that day.

As I have also testified previously, you could call—first of all, it wasn't Maggie Williams' office that you were calling when you called that number. You were calling the First Lady's Executive Office Building number. There are a lot of places that you could be connected when you call that number. It was often the most convenient place to call to reach other people who worked on the First Lady's staff, not—

The CHAIRMAN. Like who? Please, Ms. Thomases, because it disturbs me. Tell me, who? I mean you make—I look at this record and you leave a message for Maggie Williams at 9 o'clock. Susan Thomases, 11:04, Maggie Williams, there's a connection, 6 minutes, 11:37. We're not talking about a long period of time. Within a half hour, another call to the Executive Office, to the Executive Office of the First Lady. Nine minutes. Now, who was the mystical person that you were talking to if you didn't talk to Ms. Williams?

Then within 15 minutes, another phone call to the Executive Office of the First Lady. The First Lady is not there. Four minutes. Then thereafter—now, look, it is not reasonable, it is not credible to suggest to this Committee that you just called people out of compassion. You don't make phone calls with this kind of frequency. When you suggested you called Mack McLarty at 10:48, spoke to somebody there for 3 minutes, and thereafter in between, made another phone call to the First Lady's Executive Office for 1 minute.

If you were wondering why the Senator has difficulty understanding this—that you made no connection, et cetera—you are the very busy person who said you had conference calls to make all day, and that's why you initiated that call so early in the morning to Bernard Nussbaum. When did you have time to make these calls? If I see 10:48, 11:04, 11:15, 11:16, 11:37, 11:50, those are calls we know you made in addition to anything else. It seemed to me that you were concerned with something at the White House, and pretty desperately reaching out.

Now, I have to tell you, it is distressing to this Senator to hear someone like yourself, with your intellect and legal training and as counselor not only to the First Lady and others, to come before this Committee and to suggest that was the White House switchboard or the First Lady's office. I really don't know if I spoke to Ms. Williams or not. I mean, it's not credible. Then to suggest well, I know I spoke to her once. It does not ring true, I'm sorry to say.

Ms. THOMASES. Can I respond?

The CHAIRMAN. Yes, certainly.

Senator SARBANES. Mr. Chairman, I think the first thing I'll do with my time is give Ms. Thomases the opportunity to respond to this barrage that's been thrown at her over the last few minutes.

The CHAIRMAN. Fine.

Senator KERRY. I'm not sure it should have to be off your time, Senator.

The CHAIRMAN. It doesn't have to be, of course not.

Senator KERRY. She should respond.

Ms. THOMASES. Thank you, Senator Sarbanes.

Mr. Chairman, I had a very tight schedule that day, and I had approximately, and I say approximately, an hour to make the calls I wanted to make in between meetings. I had meetings in the morning and I had a luncheon meeting that I had to go to. Then I had to fly directly back to New York so that I could be there for a late afternoon meeting.

So if I made a lot of calls in that hour, it was because that was the hour I had to make calls. I can't tell you exactly who I reached. I was just trying to touch base with all of the people who worked for the First Lady who I had known, some of whom—

The CHAIRMAN. I ask you who all the people are, and you weren't able to tell us at the previous hearing.

Ms. THOMASES. Well, some of whom I subsequently learned were not in Washington that day and I probably learned that on that day. That doesn't mean I didn't try to reach them.

The CHAIRMAN. If I told you that we have a letter from the White House which indicates, and I'll give it to you, that nobody from the White House staff, First Lady's staff, recalls speaking to you; in other words it wasn't a question that some intern—because there was a suggestion that maybe an intern or someone else, in your previous testimony, may have spoken to you.

I mean here you are pressed for time, with an incredible time schedule, and yet these phone calls are being made, and obviously you've spoken to someone. You can't tell us that you spoke to someone for 9 minutes when it was directed to the First Lady's office.

If it wasn't Ms. Williams, who was it that you were speaking to? On a day when you were so tremendously pressed. Then within 13 minutes you again speak to that office, again for 4 minutes. It defies credibility. It's not there.

If you want to respond.

Ms. THOMASES. Mr. Chairman, also you should know that you could have called that number and been put on hold and spent your time waiting for someone to pick up.

The CHAIRMAN. Ms. Thomases, to suggest to this Committee that you were on hold for 9 minutes, somebody so busy that you would have then called back again after calling other offices, I mean it's not credible. It's distressing to this Senator.

Senator Sarbanes.

Senator SARBANES. Senator Kerry.

Ms. THOMASES. Senator, Senator.

Senator SARBANES. If you want to develop it, Ms. Thomases, go ahead.

Ms. THOMASES. Senator, if you have called the White House and you are not a Senator, you have probably spent a considerable time on hold. They now have improved the system so that you can go into various voice mails, but in those days you sat on hold and it was not a totally inconvenient thing to be doing because you actually got to get some work done while you were waiting on hold for people to call.

The CHAIRMAN. Ms. Thomases, you're the person that could walk into the White House at any time, and I defy—I don't think there are many Senators who have the access and have enjoyed the access that you've had at the White House.

I think it's almost disingenuous for you to suggest to this Committee that you were waiting on hold for all of these phone calls. We're not talking about one, two, three, four, five, six. We're talking just in this one timeframe from 9 a.m. to 11:50 a.m., one, two, three, four, five, six, seven phone calls.

I just don't believe that we can accept this response.

Senator SARBANES. Senator Kerry.

Senator KERRY. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Mr. Chairman, I would like to try to clarify the record that was developed over this past summer's hearings with respect to the question of the disarming of the alarm in the White House Counsel's suite that included Vince Foster's office.

My recollection is a very distinct one that may differ with Senator Faircloth's recollection, with all due respect, Senator, that at the time when anyone entered that White House Counsel's Office on the evening of the 20th, one thing is clear, and that is that there was a cleaning crew that was in the office, the door was open, the alarm was disarmed.

Even Officer O'Neill, who would appreciate the promotion to sergeant, would also testify and did testify that the cleaning crew was in there. His job was to follow the cleaning crew around, and he did so that evening. The cleaning crew was in there and the alarm was disabled because the office was being cleaned at the time in question.

So I hope that adds something to the body of information that we have developed over those 4 weeks.

The CHAIRMAN. I believe we have one round, I am going to yield 2 minutes to Senator Faircloth.

Senator KERRY. Mr. Chairman.

The CHAIRMAN. Sure, Senator Kerry, continue.

OPENING COMMENTS OF SENATOR JOHN F. KERRY

Senator KERRY. I was following some of the proceedings earlier, but I just wanted to ascertain from my own record here, the series of calls that you say you made between about 10:48 a.m. and I guess 11:50 a.m., that's the period of time you say that you had open for the series of calls; is that correct?

Ms. THOMASES. Yes, that's correct.

Senator KERRY. Do you recall the purpose of the use of that time? Do you know what you were setting out to do at that point in time when you said I've got to try to fit these calls into that period? Do you know what was on your mind then?

Ms. THOMASES. These were people who I felt I wanted to touch base with before I went back to New York, and it was the only block of time I had to do that. They were people who I had not spoken to since they had learned that Vince Foster had died, who I thought I wanted to know how they were doing.

Senator KERRY. So this was a series of different people.

Ms. THOMASES. Yes.

Senator KERRY. You remember that specifically?

Ms. THOMASES. No, I don't remember that specifically. I just know what my style is in terms of reaching out, and most of them, I am sure, were the various younger people who worked with us in Little Rock, who I wanted to make sure that they were OK.

Senator KERRY. Well, were these younger people working in the Chief of Staff's office and the First Lady's office?

Ms. THOMASES. No, many of them were working, if not directly in the First Lady's office, in that area there, in the Old Executive Office Building, where the easiest way to reach them has often been by calling the First Lady's office and getting your call transferred.

Senator KERRY. Well, by saying that, are you also saying, then, that those calls were specifically not to Maggie Williams and not to Mack McLarty and not to the First Lady?

Ms. THOMASES. No, the calls to Mack McLarty's office were clearly intended to reach Mack McLarty. The calls to the 6266 number, that was not the most direct way to reach Maggie Williams. When I wanted to reach Maggie Williams, I tended to call her on her direct line, which was not 6266.

Senator KERRY. So those calls would have been the calls to the First Lady's office, that's the number used, the generic number; correct, to the First Lady's office?

Ms. THOMASES. Yes, that is sort of the kind of central number of the First Lady's office. That office is not where the First Lady sits.

Senator KERRY. Those were the calls then you're saying that took place for 6 minutes at 11:04 a.m. and for—excuse me, for 11 minutes at 11:47 a.m. and 4 minutes at 11:50 a.m.; is that correct?

Ms. THOMASES. I said I have no specific recollection of who I spoke to. I could have spoken to some of the young people and I

also could have been on hold. I just know that that was time I spent making calls before I had to go to a lunch meeting.

Senator KERRY. You have no memory at all of who you might have spoken to for 11 minutes that morning?

Ms. THOMASES. No, I don't.

Senator KERRY. Now, within the span of, I guess, about 12 minutes you had another 4-minute call. You have no memory of what prompted you to call back 12 minutes later?

Ms. THOMASES. No. As I said, I don't know that I was calling to speak to anyone. I wasn't calling necessarily to speak to any particular person. I may have called back in attempt to reach some other person, because, as I said, that was a convenient number to use.

I'm not saying that I didn't speak to Maggie Williams. I could have spoken to her, but I have—my first recollection is that I had a conversation with her, I——

Senator KERRY. I think your testimony was previously that you believe you did speak to her.

Ms. THOMASES. Yeah, but I think that the conversation that I thought I had with her may in fact have taken place, you know, at 1 a.m. and not, you know, at some other time. But I don't know exactly when I spoke to her on the 22nd, although I do remember having a conversation with her that day.

Senator KERRY. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes. You still have some other time. OK.

Senator Faircloth.

Senator FAIRCLOTH. Mr. Chairman, I have just a few quick thoughts and opinions. I don't have any questions. I'm worn out with those. This testimony and this hearing and the testimony we've had today, in my opinion, is an insult to the Committee, just the discrepancies, the things we hear, that Ms. Thomases is on hold for 9 minutes, and the unbelievable things we have had to hear here today is an insult to the Committee.

No question, it has been enormously humiliating and embarrassing to Ms. Thomases and Ms. Williams to have to go through it and put it together and tell it to us and try to make cases on things that are obviously not reasonable.

But I think more importantly what we're dealing with here is somewhat of an effrontery to the American people who are watching this to see how we drift and how the Committee is being danced around, a Senate Committee. We're not reaching to the facts and we're not getting to them, and that concerns me more than anything we've had or seen here today.

I thank you.

The CHAIRMAN. I thank the Senator.

Ms. THOMASES. Can I respond to that even though it wasn't a question?

The CHAIRMAN. Yes, you can. Yes, you can.

Ms. THOMASES. Senator Faircloth, I have spent a considerable amount of time over the last few months——

Ms. WILLIAMS. He's walking out.

Senator SARBANES. Go ahead and make your statement even though he walked out—speaking about an effrontery, there we

have it—but I think you ought to have the time to make your statement even though he stalked out of the room, which is a common——

The CHAIRMAN. I wouldn't characterize that as stalking out of the room.

Senator FAIRCLOTH. I did not realize you responded. I'm sorry.

Senator BENNETT. I will say in the Senator's defense, he has—he is hard of hearing so——

Senator FAIRCLOTH. Go ahead, I'm sorry. I pulled my plug out.

The CHAIRMAN. We need a little humor at this point in time.

Senator FAIRCLOTH. Tell it. I'm here to listen.

The CHAIRMAN. Ms. Thomases, please.

Ms. THOMASES. I have spent considerable amount of time over the last few months trying to recreate what I did in those hours after I learned of Vince Foster's death. I have not been able to recreate every minute of it, the minutiae. I have told you very openly about the emotions. I have told you who I have reached out to speak to.

I have focused on the people whose conversations clearly made a lasting impression on me because the intensity of their feelings about Vince Foster matched the intensities of my feelings. But I also talked to dozens of people who did not share my long relationship with Vince Foster, but felt the need to be comforted and who wanted to touch base with someone. I felt the desire to reach out to them because they were young people. They had worked with me and I felt that they deserved that kind of recognition and that kind of respect.

I cannot recreate their names and I cannot recollect the specific conversations, but that was my nature, to devote some of my time to reaching out to all the people who I thought cared and would appreciate my talking to them.

Senator FAIRCLOTH. Ms. Thomases, I do not believe nor do I believe the American people that have watched these hearings believe that this absolute plethora of repeated telephone calls from you to Ms. Williams to Mrs. Clinton, back and forth, were all touchy-feely, love in bloom, sympathetic telephone calls. Now, I don't believe that's true. I don't believe that's what the calls were about, and I don't believe the American people believe that.

I thank you.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Ms. Williams, I just heard something this morning which I don't think we had heard from you before. Is it your testimony that you were not at the White House on July 22 until after 1 p.m.?

Ms. WILLIAMS. What I said during my testimony today and repeatedly during the day, you asked me if I had reviewed the records. I have reviewed them carefully. In an effort to try and piece together where the calls came from and what they did, one of the things that I looked at was the call list, I looked at my schedule, I looked at the note from Susan Thomases.

I, albeit speculation, suggested to you, and I've said this over and over again, knowing that in the end, it would end up being my testimony, what I said to you was this. I said I had a call from—I have seen the records now, and there is a call from me to Mrs.

Clinton that takes place early in the morning. I believe it's 7:44 a.m. Washington time.

Then I said having seen the materials, that there was a note from Susan Thomases which said call me when you get in. Then I looked further at the records, and I saw that there were two calls that came from my home to Little Rock. I said at least one call from my home to Little Rock. I looked at my schedule and I saw that the first thing I had on my schedule was a 1:30 p.m. meeting.

So what I said, trying to help the Committee understand what my day had looked like and where those calls perhaps had fit in, I suggested that perhaps I wasn't even there that morning, given all of the different pieces of papers and now phone records that are now available to me, as well as to you.

Mr. CHERTOFF. Didn't you tell us in the summer, Ms. Williams, that in fact you were around on the periphery of the discussions at the White House that took place that morning with Mr. Quinn and others in Mr. McLarty's office about whether or under what conditions there ought to be a search of Mr. Foster's office?

Ms. WILLIAMS. You need to be clear about what "periphery" means. I was never in a meeting with Mr. Nussbaum or Mr. Quinn about documents. What I suggested to you was there was discussion around the White House in the halls about the documents.

Mr. CHERTOFF. That was on the morning of the 22nd?

Ms. WILLIAMS. Yes.

Mr. CHERTOFF. So you were in the halls of the White House on the morning of the 22nd; right?

Ms. WILLIAMS. Right.

Mr. CHERTOFF. Did you go back home to make a telephone call to Little Rock?

Ms. WILLIAMS. Mr. Chertoff, as I have said to you earlier, I have not said to you that I was at home. I have suggested to you that perhaps I was, looking at everything. I don't know. I don't recall.

As I understood it, the way it was left was that you were going to check the log to see if I came in or if I didn't come in, so you check the log, see whether or not I came in or I didn't come in—

The CHAIRMAN. Ms. Williams, I have to interrupt, and Counsel, too. If we look at your testimony, what you said previously and today, and reconfirm in substance what you said, you were in the White House during the morning of the 22nd. You said you were at the periphery, and we understand that that does not mean that you were in meetings, but in the hallway, in discussions, et cetera. Your previous testimony indicates that.

Now there is a question as it relates to a call that was made in the early afternoon. What is the exact time?

Mr. CHERTOFF. About 12:57 p.m.

The CHAIRMAN. At 12:57 p.m. That call was charged to your home. The question, then, is whether you went back to your home and made the call from your home, or whether it could have been a credit card call to your home. That's an open question as to whether or not you left to do that, but you're not saying that you weren't in the White House that morning.

Ms. WILLIAMS. I am also not saying I—you know, it is very difficult—

The CHAIRMAN. You are not sure whether you made that phone call from your home; is that correct? That's understandable. I am not—the 12:57—

Ms. WILLIAMS. I thought it was understandable.

The CHAIRMAN. OK. But I think it's important to clarify it.

Ms. WILLIAMS. I guess I do not understand. What is the specific point?

Mr. CHERTOFF. The specific question is this. Did you leave the White House around the middle of the day to go home to make your telephone call to Little Rock, or did you choose to take your personal credit card, phone card, and put the call to Little Rock on the phone card?

If either of those situations is true, is there a particular reason you wanted to place that call, not using a White House telephone which might have a record of the call? That's the question. I guess you don't have an answer.

Ms. WILLIAMS. No, I would not look for one.

Mr. CHERTOFF. Let me ask you, on the 22nd which begins with you getting the 3-minute call from the First Lady from Little Rock, just to be clear, is it your testimony that the sequence of calls you made in approximately 1 hour starting at 10:48 in the morning to about 11:50 in the morning, several of which were to the office of the First Lady, is it your testimony those calls were not made looking for Maggie Williams?

Ms. THOMASES. I said I may have looked for Maggie Williams but that is not the way I usually would have reached out to Maggie Williams because when I want to talk to Maggie, I used to call her on her direct line.

Mr. CHERTOFF. Did you know that we got letters from the White House—at the last hearing this issue came up about who may have actually taken the call, and we asked the White House to solicit all the interns and volunteers, both on the permanent staff at that time and those who were there in a volunteer capacity, to see if anybody recalled on that day talking to you, and not a one had that recollection.

Would you agree with me that for an intern to be working at the White House to get a 9-minute call from you on that day, it probably would be something that that intern would remember; right?

Ms. THOMASES. I am telling you it is unlikely that I spent 9 minutes talking to an intern.

Mr. CHERTOFF. Since the permanent staff members in the office at that time have indicated none of them have a recollection of talking to you on that day, can you give us an insight as to who you were trying to reach in Maggie Williams' office and who you connected with for a 9-minute phone call?

Ms. THOMASES. I can't specifically tell you who I was trying to reach, and I'm a little reluctant to name all the people who can be reached through that phone line because it is not pleasant for people to have this Committee reaching down to them, but I will give you a list off this public record.

Mr. CHERTOFF. In fairness, we got it from the White House. The White House gave us a list.

Ms. THOMASES. No, the list you got was probably of the interns.

Mr. CHERTOFF. It was also of the permanent staff.

Ms. THOMASES. I would like to see that list.

Mr. CHERTOFF. We will be very happy to furnish that list.

Ms. THOMASES. I'm serious, and I will try to supplement it.

Mr. CHERTOFF. One last question.

Ms. THOMASES. You can call that number and then get transferred to another number within that suite. It's the way I often contact people because I do not recollect or keep a record of all the people who work for the First Lady. So if I want to reach them, the easiest way to call them is that main number.

Mr. CHERTOFF. Let me direct your attention now to something Senator Faircloth raised, which is Tuesday, July 27, and on that day, record shows you were at the White House for 6 hours, starting about 2:50 in the afternoon and leaving around 8:20 p.m.

Were you aware that that was the day that Mr. Barnett from Williams & Connolly came to the residence to remove the Foster records from the residence and take them to the law firm?

Ms. THOMASES. I was not aware of that.

Mr. CHERTOFF. Did you know that Mr. Barnett arrived 10 minutes after you did?

Ms. THOMASES. I was not aware of that.

Mr. CHERTOFF. Did you see Mr. Barnett there?

Ms. THOMASES. I don't remember the first time I saw Mr. Barnett after Vince's death.

Mr. CHERTOFF. That was the same afternoon that ultimately ended around 7 p.m. with the Attorney General and the Deputy Attorney General first being told about the torn-up pieces of paper in Vincent Foster's briefcase. Let me step back.

The day before, the Monday, you were called by Bernie Nussbaum and told about the fact that there was paper with writing found in Mr. Foster's briefcase; correct?

Ms. THOMASES. Yes.

Mr. CHERTOFF. When you came to the White House the next day, did you have any conversation with anybody during that 6 hours about that torn-up paper in the briefcase?

Ms. THOMASES. No, I do not recollect having such a conversation.

Mr. CHERTOFF. You don't recollect it?

Ms. THOMASES. I mean, this is the first day I have known about the idea that I was in Washington on the 27th. It's not my usual date to have come to Washington.

Mr. CHERTOFF. That's right. Wednesday is your usual day?

Ms. THOMASES. Yes.

Mr. CHERTOFF. The 27th was a Tuesday?

Ms. THOMASES. That's right.

Mr. CHERTOFF. The day before you had gotten a call from Mr. Nussbaum, even before the President knew, you were told by Mr. Nussbaum that there was a note with writing in the Foster briefcase; correct?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Did that cause you to come down the next day?

Ms. THOMASES. I don't think so, because I can tell you two things about my schedule that week. I had my first very important meeting with a prospective client the next day in New York, which is why I wasn't going to be coming to Washington on that Wednesday.

Mr. CHERTOFF. Well, the next day was Tuesday.

Ms. THOMASES. No, the next day—I mean the 28th, the 28th of July I had my first meeting with a prospective client, and I had to be in New York, and I was not going to be coming to Washington that Wednesday.

Mr. CHERTOFF. Why did you decide to come down that Tuesday?

Ms. THOMASES. I haven't looked at my records to know that.

Mr. CHERTOFF. It had nothing to do with the fact that the day before, you had been told the note had been found or the writing had been found in Mr. Foster's briefcase?

Ms. THOMASES. I do not remember that as a triggering event. There was nothing in that note, as described to me by Bernie, that would have caused me to feel the need to come to Washington.

Mr. CHERTOFF. Did Mr. Nussbaum tell you that there was some debate going on in the White House about when and whether the Attorney General and the investigators ought to be shown the note?

Ms. THOMASES. He did not tell me about a debate.

Mr. CHERTOFF. You understood when you were told by Mr. Nussbaum that the note had been found that the Attorney General hadn't been told yet; right?

Ms. THOMASES. I don't know——

Mr. CHERTOFF. You'd been told the President hadn't been told?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Did that seem unusual to you that you were told about the note before the President?

Ms. THOMASES. The President wasn't in town.

Mr. CHERTOFF. You weren't in town, either. You were in New York.

Ms. THOMASES. Maybe he hadn't reached the President, but I think he told me because he knew that I was very close to Vince, and I was very close to both the President and the First Lady.

Mr. CHERTOFF. Did you know that you actually got the word before Mr. Foster's wife got the word?

Ms. THOMASES. No, I didn't know that.

Mr. CHERTOFF. Did Mr. Nussbaum ever explain to you why he felt it was more important to get the word to you before the word was actually gotten to Mr. Foster's wife?

Ms. THOMASES. We never discussed it.

Mr. CHERTOFF. The next thing, when you came down, you were there for 6 hours; right?

Ms. THOMASES. I don't know that I was at the White House for 6 hours, because as with the previous week, you can stop by there, leave there and come back so they record—I don't know how their system works.

Mr. CHERTOFF. You think the record is wrong?

Ms. THOMASES. I don't know that the record is clear, because when I had come on the 21st—I will give you this example—I had come directly to the White House from the airport. I then left to go to my office to do work for a number of hours and then came back in the evening to see the President.

But the records of the White House showed me having arrived at whatever time it had me arrive and staying until I finally left that evening, as if I had been there the whole time on the 21st, when I know and everybody else knows that I, in fact, was at my

office for a significant number of hours in the middle of the afternoon, because that's why I was coming down to Washington.

Mr. CHERTOFF. Do you have an arrangement with the White House in which you are able to come and go, enter and exit, without the normal recording system picking it up?

Ms. THOMASES. I have no idea. I am telling you, I have no idea. I obey all of the rules that they have, but maybe their rules don't always work. I am telling you, I mean, I come and go, as everybody does, through the entrances, and in those days I had a pass and so I would have had to flash my pass to get in and out.

Mr. CHERTOFF. Ms. Thomases, let's assume that sometimes the record doesn't catch every entry and exit. Would you agree with me that if it says you entered and exited at least that that happened; right?

Ms. THOMASES. Oh, yes, that's what I am saying. It is probable that I entered the time it says I entered and it is probable that my last exit was the time it says I exited, but I don't think that you can be certain, nor would I say I could be certain, that I was there all the hours in between.

Mr. CHERTOFF. Your quibble with us is whether you were in and out during that 6-hour period or whether you were there continuously; right?

Ms. THOMASES. That's right.

Mr. CHERTOFF. Now, during that period of time, however many minutes or hours you spent in there, Mr. Nussbaum, who had called you the day before about the note, never had a discussion with you about the note?

Ms. THOMASES. I have not looked at my record for the days. I have not looked at any of my notes for the days. This is the first time I have thought about it. I am willing to look at it, but I am not——

The CHAIRMAN. Counselor, are you suggesting to this Committee that something so important—the note that people were looking—the suicide note, that you wouldn't recall whether you had a conversation with Mr. Nussbaum with regard to that on the very day that it was turned over to the Attorney General, on the very day after the day that he had informed you of that, and on the very day that the President and others were to be informed, that you didn't discuss this and you wouldn't remember, that you would have to refresh your recollection by going to your notes to remember something like that?

Ms. THOMASES. Mr. Chairman, can I tell you something? I said this in my original—either my deposition or in my original testimony. When Bernie told me about the note, he said to me a couple of things that I remember very clearly. One is that there were no surprises in it, that there was nothing in it that we had not heard before in terms of Vince's state of mind, and so I was not as interested in the contents of this note as some other people might have been.

Mr. CHERTOFF. Did you have a conversation with Mr. Nussbaum when you were there during that 6 hours between your first entry and your last exit about how to handle and whether to disseminate the contents of that note to the Attorney General or to someone from the Park Police?

Ms. THOMASES. I don't have any recollection of talking to Bernie about how to handle that note.

Mr. CHERTOFF. I have nothing further, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Chairman, first of all, I want to quibble with Mr. Chertoff's use of the word "quibble" when we were addressing the point of how long Ms. Thomases was in the White House.

They have a record that shows her going in at 2:50 p.m. and leaving at 8:20 p.m. Ms. Thomases makes the point that on an earlier date, a similar record assumed that she was there from the time she was shown entering until she was exiting, and she knows, I take it, that that was not the case.

Now, she hasn't had a chance, I take it, to check her records on this day, but to sit here and constantly assert that she was there for a full 6 hours, when in fact she may have gone in, left, later come back and then left and what's reflected is the initial entry and the final departure is more than a quibble. So I just want to be very clear about that. She said that on another occasion, she was shown in there for a very lengthy period of time and she knows that was not the case.

Second, Ms. Thomases, let me ask you, you called this number, 456-6266, on occasion in order to be transferred to other people that were working in the Executive Office Building; is that right?

Ms. THOMASES. Yes.

Senator SARBANES. Now, on this day, the letter from the White House says that they spoke with the volunteers who work in that suite of offices, a number of elderly volunteers, none had a specific recollection of speaking to Ms. Thomases on the days in question.

It then goes on to say, "I understand that in seeking the above information from the White House, the Committee hopes to determine with whom Ms. Thomases spoke when she called 456-6266 as reflected in the telephone records she produced to the Committee. In that regard, I note that on any particular call, Ms. Thomases could have called into 456-6266 and have been transferred to a different number, and then spoken to someone in the White House other than those people we have questioned."

In fact, you may have spoken to someone in the whole White House complex other than people in the office of the First Lady; isn't that correct?

Ms. THOMASES. That is correct.

Senator SARBANES. So you would use this number as a reference point, you would call in and say can you connect me with Jane Doe, who works somewhere in the complex, and then they would connect you off to Jane Doe; is that correct?

Ms. THOMASES. That is correct.

Senator SARBANES. Had you done that on prior occasions?

Ms. THOMASES. Yes, I have done that. I actually continue to do that on occasions, Senator.

Senator SARBANES. So it was something you had done previously in order to try to reach people that you were trying to reach; is that correct, who were working somewhere in the White House complex?

Ms. THOMASES. Yes, Senator, that is correct. Thank you for the clarification.

The CHAIRMAN. I'm about to wrap this up. If Counsel on either side has no further testimony, I will say—I will state—and I speak just for myself—that given Mr. Neuwirth's testimony, and that was that it was his understanding that Mr. Nussbaum felt that Ms. Thomases and the First Lady may have been concerned about anyone having unfettered access to Mr. Foster's office, and I'm reading from his deposition, page 112.

Given the record of phone calls that started at a quarter to 7, 6:44 a.m. in Arkansas, 7:44 Eastern time, from Arkansas back to Ms. Thomases, from Ms. Thomases to Bernie Nussbaum at 8:01; given, Ms. Thomases, your contention of a very busy day and that's the reason you started, and I can believe certainly you have a busy day and you start trying to reach people who are essential; given that from the period of 10:48 a.m. to 11:50 a.m., within a period of 1 hour, we have six phone calls to the White House, to Mr. McLarty's office, to the Executive Offices of the First Lady. Then we have total conversations of 9, 12, 13, 22—of 26 minutes, and we are led to believe that, within that period of time, for 26 minutes you either reached nobody or reached Mr.—you don't remember reaching Mr. McLarty, or possibly once that you spoke to Maggie Williams, but you don't recall what you spoke of, and that you either got no one or were placed on hold, I have to tell you it is beyond belief.

When we couple that again with Mr. Neuwirth's testimony or his deposition and then we couple that with the fact of the conversations and the reaching-out that you did have with Mr. Nussbaum, I just have to suggest to you to come before the Committee and to put forth this contention that you were trying to reach out and hold the hands or console interns as possibly a reason for calls——

Ms. THOMASES. I didn't say "interns." You said that interns answered the phone and that that's who they checked with as to whether I had talked to interns.

The CHAIRMAN. Given the fact that you have not been able to supply us with the names of people who you did speak to specifically, even though you are this busy person telling us that you were trying to maximize on your time.

Given the manner in which these calls occurred, it is not credible. I have to suggest to you that's why Members of the Committee then call for the First Lady.

I'm deeply distressed. I think that your answers have not been responsive to this Committee. The failure to recollect, the failure to recollect in terms of whether or not you specifically addressed the question of the note on the 27th, highly—I mean in spending a 6-hour period of time, whether you spent the full 6 hours, certainly at the very least you were in there for a considerable period of time, even if you left and came back.

During the very time when the note was released, you had knowledge of the note prior to the Attorney General, prior to the President, that is something that—again, any one of these incidents, any two of these incidents, I think we understand, a call, an initial call, but not followed by a series of repeated calls.

That stretches the imagination, so I just have to tell you, that's why some of the Members, some of my colleagues, Senator Mack, Senator Faircloth, Senator Bennett, have a difficult time accepting your explanations.

I understand their concern because the Committee is not able to go forward in a manner where we can say that we have the facts. I think the facts have been obfuscated.

You're very capable. People from all over ask you for advice, for counsel. I think that we have now seen how you can give advice and counsel—how you have tried to make it appear that this was just a series of calls and just an attempt to reach out and console people in their hour of need.

The sequence of these calls suggests something far different than that. That's my view of it, I don't suggest it's the Committee's. I certainly know, because Committee Members have expressed here today and have expressed, I think, throughout, the fact that they are not satisfied that the answers are fully responsive.

Yes, Senator.

Senator SARBANES. Well, Mr. Chairman, I just want to make sure I clarify some things while Ms. Thomases is still at the table.

You made three phone calls that morning to the Chief of Staff's office for 3 minutes, 3 minutes, and 1 minute. I take it it's your testimony you were trying to reach Mack McLarty?

Ms. THOMASES. Yes, I was.

Senator SARBANES. That that was the purpose of those calls; and unsuccessfully, I gather?

Ms. THOMASES. Unsuccessfully.

Senator SARBANES. OK. You also then made calls to this general number in the First Lady's office, the central number, I take it. I take it it's your testimony, usually when you try to reach Maggie Williams, you would call her specific number, which was different from the general number; is that correct?

Ms. THOMASES. That's correct.

Senator SARBANES. You would call this general number in order, then, to be connected with people working in the White House complex but perhaps not in the First Lady's office; is that correct?

Ms. THOMASES. That's correct. Some of them may have been working in the First Lady's complex and some of them may have been working just in the White House complex.

Senator SARBANES. Is it your recollection that that morning you were trying to reach some of those people? Is that what you're telling—

Ms. THOMASES. Yes, my recollection is I was using this block of time to reach as many of these people as I could reasonably reach in the small bit of time that I had that day.

Senator SARBANES. Now, let me ask you about these records. You say on the 21st you saw a record of you entering and leaving the White House at certain times and that that was not correct?

Ms. THOMASES. I was told of it. I was told when I either testified last time or when I gave my deposition, that I was seen—that the record showed that I entered the White House at 2 o'clock, whatever time it was, and that I left the White House at 8 o'clock or whatever time I left the White House on the 21st, as if I had been there for the entire time. I know I was not there the entire time.

Senator SARBANES. All right. So in other words, what the White House records showed is a time when you entered and a time when you exited.

Ms. THOMASES. That's right.

Senator SARBANES. But you may have left and re-entered in between, in fact that's your recollection?

Ms. THOMASES. That's correct.

Senator SARBANES. OK. Thank you, Mr. Chairman.

The CHAIRMAN. I don't believe we have any other remarks or any other questions. I want to thank the witnesses for their appearance today. This Committee stands in——

Senator SARBANES. Mr. Chairman, when will we meet next week?

The CHAIRMAN. It's our intention to meet at 10 a.m., Tuesday morning.

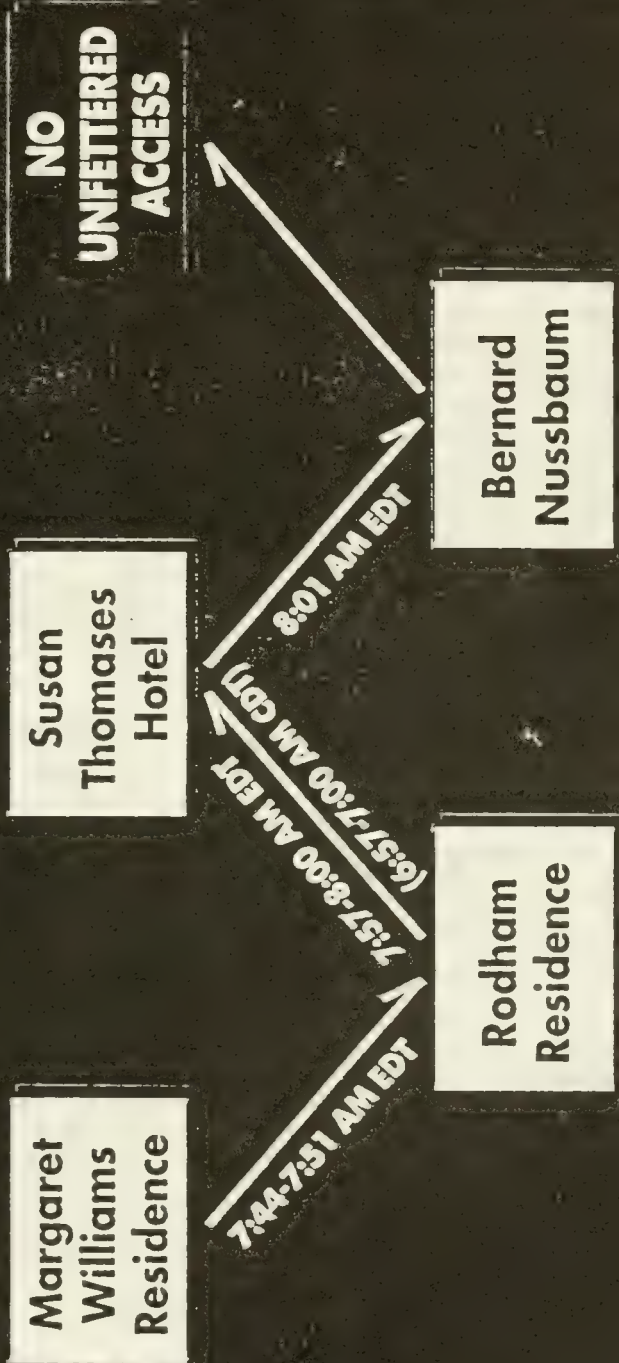
We stand in recess until 10 a.m. Tuesday morning.

[Whereupon, at 1:32 p.m., the hearing was recessed, to reconvene at 10 a.m., on Tuesday, November 7, 1995.]

[Appendix supplied for the record follows:]

APPENDIX

Early Morning Phone Calls July 22, 1993



helps me, and you know. It's usually - I just work out of that office. I stand in that little

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vestibule.

Q So the uniformed officer took you up or rode up with you and opened up Mrs. Clinton's office?

A For some reason I think we went up first and waited. Because I don't think he could leave his post downstairs because it's right at the door, and I think he may have said I'll call somebody, or he got somebody to hold his post and he came up. I don't know who opened the door, but I think he couldn't leave with us.

Q And the officer you saw, you think you saw with the cleaning people when you saw the light from Vincent Foster's office was the same officer who opened the door for you?

A I don't know. But he was somebody I had seen before.

Q And - so they were standing outside the White House counsel's suite?

A Uh-huh.

Q The White House counsel's vestibule or reception area was dark?

A Uh-huh.

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Q Mr. Nussbaum's office was dark?

A Yeah.

Q There was a light that you could see emanating from where you knew Mr. Foster's office to be?

A Right.

Q You then went into the counsel suite?

A Right.

Q You walked into Mr. Foster's office and you saw Patsy Thomasson sitting behind the desk?

A Right.

Q What was she doing?

A She was crying. And she was lifting - she lifted paper, and then she put them down.

Q Did she tell you what she was doing?

A She didn't tell me what she was doing, but I mean, it makes sense to me now; it didn't then.

But I remember her saying something like Lisa would be comforted if we could find the note or something.

At the time I just kept thinking Lisa? Because the only Lisa I could think of was Lisa Caputo, but it

was Lisa Foster. But I didn't - at the time I just

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thought it was - I couldn't figure out what she was talking about.

Q So you then sat down on the sofa?

A Uh-huh.

Q And how long was it before Mr. Nussbaum walked in?

A It seems pretty quick. I feel like I

just - I walked in, I saw Patsy. I immediately sat down and started weeping again, and Bernie came in

and he just started to pace.

Q And what did he say?

A Nothing. He was scratching his head and shaking his head.

Q Did he say where he had come from?

A No.

Q When he came in, did - did he turn on the light to the reception area?

A I don't know. I couldn't see, and when I went out, I don't remember.

Q You don't remember if it was lit or not?

A No. I can't remember if it was.

Q When you came out, do you remember whether

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Mr. Nussbaum's office was lit?

A No, I don't. No, I don't.

Q Did Ms. Thomasson tell you how she had gotten into Mr. Foster's office?

A No.

Q Mr. Nussbaum said nothing during the period of time he was pacing?

A He may have said something to me like don't cry or whatever, but I don't think he knew what to say.

Q And how long do you figure he spent there?

A It wasn't long because I didn't spend that long there. And like I said, I can't remember if he went first or if I went first. But like I said, I always have a snapshot of us in the stairwell together.

Q And your snapshot is of him ahead of you?

A Uh-huh.

Q And that snapshot in your mind occurs immediately after you leave the office?

A I don't have any timing on it. But when, you know, I have been asked this question quite a few

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times about the sequence of who left and whatever, and the closest I could ever get to it was seeing us together in the stairwell. So I assumed it was afterwards because that was the only time that I saw Bernie that night, was in the office when I went in there. And the only time I see him is in that stairwell.

Q And Ms. Thomasson remained behind?

A Uh-huh.

Q Is there anything else you remember

Ms. Thomasson saying during the period of time you were in there?

A I mean, I don't remember anything that she said. I mean, I can't believe she didn't, you know, shake her head or say why or, you know, the usual stuff, but I don't remember it as a conversation. And that Lisa thing stands out because I kept thinking why is she talking about Lisa Caputo. I didn't understand what that meant. But I don't remember anything else.

Q Now did you carry anything out of the

White House counsel's suite?

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111 A No.
 112 Q Did Mr. Nussbaum give you anything to
 113 turn?
 114 A No.
 115 Q Your recollection is that you then went
 116 down in the direction of Mr. Gearan's office, whether
 117 or not you actually were there, correct?
 118 A Yes, that's correct.
 119 Q And then shortly thereafter, you went back
 120 up to get Ms. Lieberman to go home?
 121 A Right.
 122 Q And how did you arrange to lock the First
 123 Lady's suite?
 124 A Oh, I'm sure that we either phoned the
 125 guard or told them on the way out.
 126 Q As you walked out -
 127 A Well, I don't know if he was still there.
 128 I mean, he could have been there because I don't
 129 know
 130 how long he was mulling about. I can't imagine that
 131 we wouldn't have said to him that we're leaving; lock
 132 up. I mean, there's just no way. One of us would
 133 have said it.

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111 Q And when you walk out of that suite, you
 112 would walk to the elevator to take you to the ground
 113 floor, correct? That takes you by the White House
 114 counsel's suite, correct?
 115 A Right.
 116 Q At that point when you left, was the light
 117 still on in Mr. Foster's office?
 118 A I don't even know if I looked. I don't
 119 know.
 120 Q Was Ms. Lieberman at some point in time in
 121 the White House counsel's suite?
 122 A Not when I was there. I only saw her -
 123 she was only at the desk.
 124 Q And did Ms. Lieberman at some point
 125 introduce you to one of the uniformed guards?
 126 A What do you mean "introduce" me?
 127 Q Say to one of the guards, in substance,
 128 this is Maggie Williams, who works for the First
 129 Lady?
 130 A No.
 131 Q When you were on the stairwell with
 132 Mr. Nussbaum, did you have conversation with him?

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111 A No. I don't remember. Like I said, I just
 112 have this picture of us.
 113 Q When you talked to the First Lady back,
 114 later that night when you were back at home, did you
 115 tell her you had been in Vince's office?
 116 A No.
 117 Q Did you tell her Patsy Thurmon was
 118 looking for a suicide note?
 119 A No.
 120 Q Did you discuss with her whether there was
 121 any kind of suicide note or writing that Vince Foster

1121 meant none left?

1131 A All I know is we talked about - she wanted
 1141 to know if I had any idea why Vince killed himself;
 1151 did I know anything else. I didn't know anything
 1161 else, and she kept asking me. I mean, that was what
 1171 our conversation was about. And she may have said
 1181 something about - I know she said something about
 1191 the last time she talked to him and not
 1201 remembering - she should have talked to him more
 1211 or
 1221 something. I don't know.

1231 Q When, when Ms. Thurmon was at

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111 Mr. Foster's desk on July 20th in the evening, did
 112 she have a cell phone with her?
 113 A I don't remember seeing a cell phone.
 114 Q And when you got back, did you have a
 115 conversation - when you got back home after being at
 116 the White House that evening, did you have a
 117 conversation with Susan Thomas?
 118 A No. I don't remember - I remember having
 119 a conversation with her the next day or something.
 120 Q Did she page you that night?
 121 A She could have.
 122 Q Would you have returned her call?
 123 A Yeah.
 124 Q Would it help you to refresh your memory
 125 about paging you if I tell you I have the White House
 126 records that indicates either you received a message
 127 to please call Susan Thomas at 212-772-6019 at
 128 12:15 a.m. in the morning?
 129 A Yeah. I mean, she could have paged me. I
 130 didn't talk to her. A lot of people page me that I
 131 don't get back to, you know.
 132 Q When did you get back to her?

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111 A Well, I probably - I'm not the most
 112 careful person on these pages. I have a tendency to
 113 turn them off. I have a tendency to leave them in
 114 different places. Where my pager was that night, I
 115 know where it was when I - the last time I remember
 116 my pager was seeing Gearan's name on it. I don't
 117 remember being paged by Susan, but, you know, it
 118 wouldn't surprise me to have been paged by Susan.
 119 Q But your recollection of the next time you
 120 talked to her was that it was the next day?
 121 A My recollection of talking to Susan that
 122 week was not over the phone. It was in person.
 123 Q She came down?
 124 A Yeah. I get my Wednesdays and Thursday of
 125 that week mixed up. But I'm sure I saw Susan that
 126 week. Either Wednesday or Thursday. I'm sure I
 127 saw
 128 her in person.
 129 Q Did you have any - you've described,
 130 actually, three conversations with Mrs. Clinton that
 131 night. A brief conversation in which she calls you
 132 from the airplane, initial conversation where she
 133 tells you that M. :er - Mr. Foster's body had

01 1995 12:39

AGC TREASURY DEPT

202 622 1944

All Entry Exits for 07/22/93 - 07/28/93; L_NAME - THOMASES; BETWEEN 12:00:00AM AND
11:59:59PM - Page 1

DATE TIME..... L NAME..... F NAME..... M BADGE. TYP POS L STATUS.....

27 08:20:53PM THOMASES

SUSAN P 34AC64 P A1 3 EXITING

27 02:50:59PM THOMASES

SUSAN P 34AC64 P A3 1 ENTERING

REPORT NO. W4V07793
RHH DATE : 9J/08/02
VISITOR

HAVES

VISITOR SUMMARY FOR 93/07

PAGE NO: 3

VISITEE

PARHETT	ROBERT
PARHETT	ROBERT
PARHETT	ROBERT
	FIRST LADY

UIN	TIME	DATE	LOC	ROOM	REQUESTOR
UR8406	0800	930723	W	WW	BECKEL
UR8213	0700	930724	W	WB	FRIEDKIN
U90150	1500	930727	W	RESIDENCE	MARSHALL

SADGE 10A PO
011658 0727 AD
..... ..
005454 1437 AU

2 891247

SH0425

CONTROL NUMBER
ACCOUNT NUMBER
BILL DATE

HCAD00
664 (Phone Number)
19930723

[Name and Residence Address]

PAGE 000000

ITEMIZED CALLS FOR AT&T
NO DATE TIME PLACE CALLED AREA NUMBER MIN AMOUNT

7	7	20	913PM	WASHINGTON	DC	Williams Res.	E	16	2.40	NV
8	7	20	1003PM	CARPENTRIA	CA	Thompson Res.	E	4	.60	NV
9	7	20	1019PM	NEW YORK	NY	Thomson Res.	E	20	3.00	NV
10	7	20	1041PM	WASHINGTON	DC	202 628 7087	E	10	1.50	NV
11	7	20	1052PM	ALEXANDRIA	VA	Robert Res.	E	4	.60	NV
12	7	20	1146PM	WASHINGTON	DC	Family	H	2	.26	NV
13	7	21	1209AM	WASHINGTON	DC	White House Res.	H	13	1.69	NV
14	7	21	756AM	WASHINGTON	DC	White Switchboard	H	17	8.11	NV
15	7	21	850AM	WASHINGTON	DC	DoJ Command Ctr	H	1	.23	NV
16	7	21	1044AM	TAMPE CITY	CA	Sunnyvale Hotel	H	15	3.60	NV
17	7	21	1104AM	WASHINGTON	DC	Anthony Res.	H	1	.23	NV
"Z"	-	AT&T	SELECTSAVER	PLAN-5% DISC	CHARGES NOT INCLUDED	IN TOTAL				
"V"	-	AT&T	SELECTSAVER	PLAN-5% DISC	CHARGES NOT INCLUDED	IN TOTAL				

PAGE 000009

NO	DATE	TIME	PLACE CALLED	AREA	NUMBER	MIN	AMOUNT	
10	7	21	416PM	WASHINGTON	DC	DoJ Command Ctr	1	.23
19	7	21	540PM	WASHINGTON	DC	WH Switchboard	2	.30
20	7	21	544PM	WASHINGTON	DC	DoJ Command Ctr	2	.30
21	7	21	645PM	WASHINGTON	DC	Lincoln Off.	12	1.80
22	7	21	902PM	WASHINGTON	DC	Jordan Res.	13	1.95
23	7	21	917PM	MIAMI	FL	Family	40	6.00
24	7	22	657AM	WASHINGTON	DC	Thompson on 0 St.	3	.59
25	7	22	218PM	MIAMI	FL	Family	21	5.04
26	7	22	1019PM	WASHINGTON	DC	WH Switchboard	1	.15

"Z" - AT&T SELECTSAVER PLAN-5% DISC CHARGES NOT INCLUDED IN TOTAL
"V" - AT&T SELECTSAVER PLAN-5% DISC CHARGES NOT INCLUDED IN TOTAL

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

FRIDAY, DECEMBER 8, 1995

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
*Washington, DC.***

The Committee met at 10:10 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. Today the Committee basically has three items that I believe we should consider. First, the issuance of subpoenas for the notes of William Kennedy, for the testimony of Susan Thomases, William Burton, and Sylvia Matthews. Second, reviewing new Susan Thomases' telephone records. Third, reviewing new evidence concerning, up until last evening, the mystery telephone number that was called from the Rodham residence on the night of Vince Foster's death.

We will first have Mr. Chertoff report on new telephone records that the Special Committee received late Wednesday afternoon or evening, 2 days ago from Mrs. Clinton's close associate, the distinguished attorney from New York, Susan Thomases. Why do I say distinguished attorney from New York? Because I believe, had we subpoenaed these records earlier on, we would not had them withheld from this Committee for such a long period of time. We asked for these records. It's a matter of months, and I have to tell you I think it is an absolutely outrageous situation to have them produced in the manner in which they have been.

These new records are another important piece in the puzzle surrounding the handling of the documents in Deputy White House Counsel Vincent Foster's office following his death. The records indicate that Ms. Thomases made two additional calls to Mrs. Clinton and one additional call to Ms. Williams on July 21 and 22, 1993.

During these days, the White House Counsel Bernard Nussbaum entered into and then broke an agreement that would have allowed career Justice Department officials to review the documents in Mr. Foster's office.

I am more than upset that the Special Committee did not receive these records earlier. Understand that the Committee first requested these records on July 11, 1995. We did not even receive these records in time for our hearing in October when we questioned Ms. Thomases about her telephone records. Recognizing that she was an Officer of the Court, an attorney, we afforded her the opportunity, and we were under the impression that she would make these records available without us having to subpoena them.

Only after we have summoned Ms. Thomases for a third time, does she produce these records through her counsel for us. Obviously, Ms. Thomases did not conduct a thorough search for these records. I am very concerned that her failure to search for these records was deliberate.

Mr. Chertoff will now describe these records and explain their significance.

Mr. CHERTOFF. Thank you, Mr. Chairman.

We have a chart which indicates what the additional records are. The chart actually is in three colors. The original blue is the records that we had obtained as of the summer when we had our hearings into the handling of the Foster papers.

The gray records, or the light blue records are the records that we received after the hearings were concluded which were the subject of the hearings that we had in October.

I think the public and the Committee will recall that among the critical records obtained at that point was an early morning call, made before 7 a.m. Little Rock time, from Margaret Williams' residence to the Rodham residence, followed within a few minutes by a call from the Rodham residence to Ms. Thomases' hotel, followed immediately thereafter by an effort from Ms. Thomases to get Mr. Nussbaum on the telephone.

I think many on the Committee, and perhaps many in the public have concluded that the sequence of calls is very compelling evidence about Mrs. Clinton's direct involvement in the decisionmaking about the handling of the documents. That was the state of the matter, Mr. Chairman, as of earlier this month.

On Wednesday, we received, to our surprise, a letter and a fax with accompanying records from Ms. Thomases' attorney. Ms. Thomases' attorney, and this is something that's been provided to all the Members of the Committee, had suddenly come up with the original records that Ms. Thomases had or copies of the original records that Ms. Thomases had at her law firm, that covered her home phone and her various cellular phones.

As of August 9, we had been told in a letter by Ms. Thomases' attorney, "Because Ms. Thomases does not retain such information, we have requested today that the telephone company provide us with relevant records for this period." It turns out, however, approximately 3 months later, that while Ms. Thomases may not retain the information on her own person, her law firm retains the information.

I would suggest, Mr. Chairman, that the representation made in the letter of August 9, that Ms. Thomases does not retain this information, is very misleading.

So what is the explanation that was afforded to the Committee about the fact that these records were belatedly discovered?

According to the letter of December 6, by Ms. Thomases' attorney, an associate at the law firm, reviewing firm files for another purpose, had discovered telephone records that appeared to be responsive to our request of this summer. In particular, there was an expense report prepared for Ms. Thomases on September 24, to which she had attached her phone records.

Mr. Chairman, I am going to suggest that we further probe the circumstances under which these were produced because although there is a suggestion made in the letter that the reason this was overlooked is that the expense report was in September and the calls were made in July, I think the Committee may wish to know, for example, whether it is Ms. Thomases' regular practice to submit her personal phone records to her firm to get reimbursement for any business-related calls. If it is her regular practice, why didn't she search those records, as any normal attorney or individual with a request for documents would do?

It makes perfect sense, given the timeframe within which people normally receive their telephone bill, that telephone calls in late July would appear on a bill that would be received in late August, and would appear on a September expense report.

The letter, therefore, that we've received by way of an excuse or an explanation seems to be quite inadequate to explain why it is the representation of August 9, that there were no records in Ms. Thomases' possession, is untrue.

Now let's get to the merits. What do the new records show?

Well, the yellow entries are the new records that we have received from Ms. Thomases as of December 6. What these records disclose—and again, I want to put them in context—is that late in the evening, after Mr. Nussbaum had reached his agreement to let the Justice Department people examine the documents in Mr. Foster's office, there was a telephone call from Ms. Thomases' hotel to the Rodham residence at 11:00 Eastern time that lasted for 1 minute.

We then pick up with the early morning calls of July 22, which I previously discussed, in which Ms. Williams has a 7-minute call with the Rodham residence, followed by a call from the Rodham residence to Susan Thomases with an immediate effort thereafter by Ms. Thomases to reach Mr. Nussbaum.

Now what we did not know, even as of October, and we know now is that Ms. Thomases then makes a call back to the Rodham residence, approximately 25 minutes after she paged Mr. Nussbaum. We do not know at this point, although I suggest that when Ms. Thomases reappears, we will try to find out, we do not know yet, Mr. Chairman, whether the call back to the Rodham residence was because Ms. Thomases had spoken to Mr. Nussbaum, where he had returned the page, or if not because Ms. Thomases wanted to inform Mrs. Clinton that she had not yet been successful in reaching Mr. Nussbaum.

What I would suggest, Mr. Chairman, is that this call indicates a degree of intense interest by the First Lady in whether Ms. Thomases was able to reach Mr. Nussbaum that is wholly consistent with the inference that the First Lady was personally concerned about the manner in which the documents would be handled.

We then continue along to the third new telephone call, which occurs on July 22. To put it in context, after this 4-minute return phone call from Ms. Thomases to the Rodham residence between 8:25 and 8:29 a.m., at 10 a.m., Mr. Nussbaum reneged on his agreement with the Justice Department.

Some time that morning, Mr. Nussbaum told his assistant, Mr. Neuwirth, that the First Lady and Susan Thomases were concerned about letting the Department of Justice have unfettered access to the documents.

There was the series of phone calls later in the morning where Ms. Thomases called the office of Mr. McLarty and the office of Maggie Williams. That was explained to us in October as perhaps calls to interns, although the White House had represented to us that no intern or no one else in that office had any recollection of talking to Ms. Thomases.

We then learned, again to continue with the chronology of that day, that Ms. Williams made a call from her residence at around 1 p.m. to the Rodham residence, and this was after she had been at the White House. The entry records for that day, which we disclosed earlier, show that shortly after Ms. Williams made her early morning call to Mrs. Clinton, she went to the White House and entered around 8 a.m. Evidently, she returned home for purposes of making this call or at least decided to put it on her home phone card. That was at 12:55 p.m. There was then another call half an hour later from the White House to the Rodham residence.

At 1:15 p.m., the abbreviated review of the documents with the Department of Justice in Mr. Foster's office began. Everyone will recall, Mr. Chairman, that that was a review in which Mr. Nussbaum had the Department of Justice people sitting by, I guess like potted plants, while he reviewed all the documents in their presence. That concluded at around 3 p.m.

We know from the record, Mr. Chairman, that after that review there were efforts made to summon Ms. Williams to come to Mr. Foster's office to engage in a second review with Mr. Nussbaum. We know that because we had telephone message pads in Ms. Williams' office that showed Mr. Neuwirth and Mr. Sloan trying to reach Maggie Williams between 2:30 and 3 p.m. We know from both the testimony of Ms. Williams and Mr. Nussbaum that she, in fact, went there.

Interestingly, at 3:08 to 3:18 p.m., we now have a new record that we received a couple of days ago, and that is that Susan Thomases called Margaret Williams. The call was directed to the office of the First Lady which is literally next door to the suite in which Mr. Foster's office was located.

I believe there was testimony in the record, Mr. Chairman over the summer, that there were occasions Ms. Williams had to leave Mr. Foster's office in order to take a phone call.

So this 10-minute telephone call which occurs between Ms. Thomases' phone and Ms. Williams who was, at that point, in Mr. Foster's office next door to the First Lady's office, is, I would suggest, Mr. Chairman, a very, very important call in terms of determining whether there was direct involvement by Ms. Thomases and the First Lady in the handling of the documents.

The day concludes with the removal of the documents up to the Rodham residence. I will tell you, Mr. Chairman, that based on the entry records we received last week, the records were not actually taken up to the Rodham residence until sometime between 7:15 and 7:30 p.m. on July 22, indicating that there was a fair degree of time in which these records were being reviewed, and there were also intervening call, at least one intervening call between Ms. Thomases and Margaret Williams between the time Ms. Williams had reviewed the records in Mr. Foster's office and the time they were taken up to the residence.

All of this suggests, Mr. Chairman, that despite our effort to be thorough and complete in reviewing everything in the hearings over the summer and in subsequent hearings in October, there is now new information I think, frankly, Mr. Chairman, inexcusably late in being received that requires us to do further examination of this matter.

The CHAIRMAN. Well, let me say that I have already made my statement in terms of finding this inexcusable. However, I think we should move on.

I am going to ask that the letter that made available this information to the Committee for the first time, dated December 6, 1995, and I would note that it was prepared at 7:56 p.m. for transmission by fax to us, and received several minutes thereafter, apparently 8:11 p.m., the time 7:56 p.m. on the letterhead of Willkie Farr & Gallagher, addressed to myself and Senator Sarbanes, Committee Whitewater, 1, 2, 3 pages by Mr. Romano in which he sets forth how it was that they finally retrieved these documents be placed in the record and the phone calls, the additional phone calls that were outlined by Mr. Chertoff, that it be placed in the record.

Senator SARBANES. Mr. Chairman.

The CHAIRMAN. Yes, Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Well, Mr. Chairman, I think for the sake of a complete record, I would like to just quote from that letter, because the production of these documents or these telephone records now has been characterized in a certain way. I don't know that the Committee knows enough to put that characterization on it.

Let me just simply note that Mr. Romano says in his letter to you and to me:

As you know, over the last 5 months Ms. Thomases has voluntarily produced a variety of telephone records to the Special Committee.

On August 10, 1995, Special Committee Associate Counsel Viet D. Dinh requested Ms. Thomases' residential telephone records for July 20-22, 1993 and July 26, 1993.

On August 30, 1995, Counsel Robert J. Giuffra supplemented that request to include records of credit card calls made to and from Ms. Thomases' Washington, DC hotel on the same dates. Responding to these requests on September 5, 1995, we stated that Ms. Thomases no longer had possession of her residential records for that period and that billing for any credit card calls would have been done through Ms. Thomases' residential service. Thereafter, it was confirmed that the telephone company no longer maintains records for this period.

This seemingly put an end to what we believed was a diligent search for these records. However, yesterday I learned from my associate, who was reviewing firm files for another purpose, that portions of certain telephone records responsive to the Special Committee's requests had been discovered as attachments to an expense report of business-related calls submitted by Ms. Thomases months after the July, 1993 period.

In particular, the associate identified an expense report prepared for Ms. Thomases on September 24, 1993, months after the period for which records had been sought by the Special Committee. The attachments to this expense report reflect not only the business-related calls for which reimbursement was sought, but also several telephone calls that appear to come within the Special Committee's requests for information, for which reimbursement was obviously not sought.

Accordingly, we are producing these documents . . . herewith 1 day after their discovery, to demonstrate again Ms. Thomases' desire to cooperate fully with all reasonable inquiries from the Special Committee.

The discovery of these expense report attachments was entirely unexpected. Indeed, until yesterday we were completely unaware of their existence because our initial search for Ms. Thomases' July, 1993 telephone records—which included several requests to the telephone companies themselves—naturally did not include a review of Ms. Thomases' expense reports for late September 1993, because they were not considered a likely source of relevant information.

At the time of the search of these records, Ms. Thomases had no specific recollection of the existence of these expense reports or the attached telephone records, and had instructed that all such records for the period being investigated by the Special Committee be reviewed for responsiveness. The failure to discover these records sooner stems solely from the fact that the particular expense report containing the partial telephone records was submitted well beyond the period of interest to the Special Committee. In the search of our records the persons delegated the task of searching simply did not consider the possibility that a telephone record containing business-related calls submitted months later could also contain information of interest to the Special Committee. [Should the Special Committee desire a more detailed written explanation of the recovery of these documents, we are prepared to submit statements by those involved.]

He then goes on in the balance of the letter, which I think ought to be put up on the machine on page 3, to indicate how, in his view, this information is consistent with her previous testimony before this Committee.

Now on the furnishing of these documents here, this is their explanation, or Benito Romano's, who is a partner at Willkie Farr & Gallagher, explanation of how this occurred.

On the face of it, I have difficulty with how it has been characterized heretofore this morning. The Special Committee may want a more detailed written explanation of the recovery of these documents, but as he indicates here:

The failure to discover these records sooner stems solely from the fact that the particular expense report containing the partial telephone records was submitted well beyond the period of interest to the Special Committee. In the search of our records the persons delegated the task of searching simply did not consider the possibility that a telephone record containing business-related calls submitted months later could also contain information of interest to the Special Committee.

I gather what happened here is that looking at records for an entirely unrelated matter, they found that portions of the business expense requests that had been submitted, those telephone documents, also contained these personal telephone calls. And of course, as soon as they discovered that, they forwarded the information on to the Committee.

So I, in the absence of further information, have difficulty seeing how this is other than an oversight. In fact Mr. Romano, it seems to me, has responded as quickly and as promptly as is possible in bringing this information to the attention of the Committee.

I take it this letter and the attachments to it will be made a part of the record.

The CHAIRMAN. I have made them a part of the record.

Senator SARBANES. I encourage that the letter be carefully reviewed by the Members of the Committee before they begin characterizing what has occurred here.

The CHAIRMAN. Well, I don't mean to get into any elongated discussion as it relates to this, but I found Ms. Thomases' testimony to be lacking in credibility when she would forget who she spoke to and how long she spoke to them, would lead us to believe that she made no connections, was disingenuous at the very least, and the failure both to produce these records and to recall these calls at critical times just compounds, it just adds to it.

Do I believe that these records were turned over when someone from the office found them? Yes. Do I believe that she was aware that other calls were made and she withheld that information from the Committee? The answer is yes. Do I believe that we have been taken advantage of as a result of our attempting to work in good faith with her and others, including the White House? The answer is yes.

Let me go on to the second part. Yesterday afternoon, we were advised by the White House, and President and Mrs. Clinton's private lawyer, Mr. Kendall, that Mrs. Clinton or counsel had chosen not to respond in a timely fashion, after we had given them a week to respond to 4 rather straightforward questions as it related to the so-called mystery number.

The questions concerned a 10-minute call from Little Rock from the Rodham residence at 11:41 p.m. Eastern time, to a number (202) 628-7087. Wide interest had been given to this. This wasn't a question of irrelevance. It had been circulated and people were questioning. We were making telephone calls. My staff had even reached out, and nothing.

It was only when you get an absolute answer, do you know specifically where this number belongs. And so we received a letter last night from the White House indicating that the call might have been made to the Chief of Staff's office at the White House by Mrs. Clinton.

Mr. Chertoff will now advise the Committee of the status of our request for information about the so-called number.

Mr. Chertoff.

Mr. CHERTOFF. Mr. Chairman, we have not received the answer to the interrogatory which was sent on November 30 with a return date of December 12, 5 p.m. The Committee was notified yesterday afternoon that at least an additional day would be necessary before the First Lady was able to respond to the interrogatory.

We did however receive a letter, the letter of December 7, which was in response to another letter we had written directly to the White House insisting on getting certain information concerning this number, which was responded to in the letter of December 7.

Simply put, it seems that the answer we've received now, at least from the White House, is that this is a White House number. And it's a little difficult to understand how it is that it has taken so long for the White House to determine what its own telephone numbers are.

I don't think I can report on much more, Mr. Chairman, until we have received the interrogatory, except to state the way the letter is worded, it does not make clear whether Mr. Burton is the only

person who spoke to Mrs. Clinton during the 10-minute call, or whether he was merely the person who picked up the phone and had a little bit of a conversation. The interrogatory should call for the remainder of that answer, and we're anxiously awaiting it.

The CHAIRMAN. I am going to ask that the full letter be placed in the record in its entirety, and to those Members, and it was addressed to Mr. Chertoff and Mr. Ben-Veniste, so I imagine the Minority has a copy of this letter, as well as the White House, because it came from the White House.

Yes, Senator Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Just an inquiry and I regret, like most Members, I haven't been at all of the hearings.

Is there any precedent for the letter to Mrs. Clinton? In the more than two centuries of our country's history, has a Senate or House Committee ever sent this kind of a letter to the First Lady?

The CHAIRMAN. I think that the precedent that we're attempting to avoid, attempting to be as circumspect as possible, recognizing the privacy and sensitivity of the First Family, but attempting to ascertain, during a critical period of time when phone calls were being made back and forth with respect to Mr. Foster and his office and the conduct of the search that would take place, and the fact that an office that was supposed to be sealed was not sealed, and all of this taking place on or about or a good part of it at this particular time, and to ascertain who this line was assigned to certainly is something that is well within the scope of the Committee's inquiry.

Senator SIMON. But my question was, is there any precedent for this?

The CHAIRMAN. I don't think there are too many precedents for a suicide in the White House taking place or for someone who worked in the White House, a Deputy Counsel in the White House, and then the activities of the White House in our precedent of 200 years.

So I don't mean to belabor it.

I would now like to move on to the issue of the subpoena.

Senator SARBANES. Mr. Chairman, I think you mean a suicide by someone working at the White House.

The CHAIRMAN. Correct. By somebody who worked in the White House.

Following the Committee's meeting yesterday, I would like to report on this, Counsel for the Committee, the White House, and Mr. Kendall, met in an effort to reach an agreement on the disclosure of information concerning a November 5, 1993 meeting about Whitewater involving Mr. Kendall, other private attorneys and White House officials, including William Kennedy, Bruce Lindsay, and Bernard Nussbaum.

As the Committee knows, Messrs. Kennedy and Lindsay have refused to answer the Committee's questions about what went on in the meeting at the White House, and Mr. Kennedy thus far has refused to turn over records documenting what occurred.

During yesterday's discussions, the White House did not put forward a meaningful new proposal to allow the Committee access to

this important evidence. In effect, the White House told the Committee that we should limit our questions to matters that happened before or after this meeting.

Members of the Committee remain committed to finding out what happened during this important Whitewater defense meeting. We have an obligation to find out if any confidential law enforcement information relating to Madison or Whitewater was mishandled at this meeting. The Committee has subpoenaed records of this meeting in the custody of the White House.

Counsel has recommended that the Committee issue a similar subpoena to Mr. Kennedy for notes that he has in his possession documenting this meeting. This subpoena will join the issue and allow the Committee to order both the White House and Mr. Kennedy to produce the requested documents.

Before ordering the White House and Mr. Kennedy to produce these documents, we will afford them an opportunity to provide a legal memorandum to the Committee, setting forth the reasons why they believe these documents are privileged. They have a right to do that. We have attempted to work through that problem as it relates to whether or not the issue of privilege was properly raised.

The Members of this Committee are committed to obtaining all the facts about Whitewater and we intend to do so in a fair and impartial manner. That is what the American people expect and deserve.

I'm going to ask Mr. Chertoff to describe the proposed subpoena.

Mr. CHERTOFF. Mr. Chairman, the proposed subpoena is directed to Mr. Kennedy who is now no longer with the White House. It requires him to produce, by 5 p.m. on December 12, which is this Tuesday, any and all documents, including but not limited to notes, transcripts, memoranda, or recordings reflecting, referring, or relating to a November 5, 1993 meeting attended by William Kennedy at the offices of Williams & Connolly.

I should say, Mr. Chairman, there is already outstanding a subpoena to the White House that encompasses within it any White House memoranda that relate to this meeting. The White House responded to us a couple of weeks ago by indicating that there was a memorandum relating to the meeting that they were claiming attorney-client privilege on.

This subpoena will put Mr. Kennedy's notes of this same meeting in exactly the same position that the White House is in, namely, an outstanding subpoena if he chooses to assert the privilege that will then be presented.

The procedure that is then followed, Mr. Chairman, is that the Committee makes a determination with respect to both the White House documents and with respect to Mr. Kennedy's notes of this meeting, whether it wants to order that they be produced and the Committee takes a position as to whether they believe there is an attorney-client privilege that applies here.

At that point, Mr. Chairman, the Committee would be able to consider the memorandum that is submitted by Mr. Kennedy, if any is to be submitted, by December 12 at the close of business.

The CHAIRMAN. Would you read when that subpoena is dated for?

Mr. CHERTOFF. The subpoena is dated, it is returnable, meaning it has to either be complied with or there has to be an objection raised based on a privilege, by 5 p.m. on December 12, which is next Tuesday.

The CHAIRMAN. I would ask you to read the entire subpoena, what we asked for.

Mr. CHERTOFF. Again, to Mr. William Kennedy, produce any and all documents, including but not limited to notes, transcripts, memoranda, or recordings reflecting, referring, or relating to a November 5, 1993 meeting attended by William Kennedy at the offices of Williams & Connolly.

I should say, Mr. Chairman, Mr. Kennedy acknowledged in his sworn testimony here that he does have notes that relate to that meeting.

The CHAIRMAN. Any comment or discussion with respect to before the Committee votes on the issuance of the subpoena?

Senator SARBANES. Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I regret that things have come to this state. I thought that the proposal that Mr. Kendall made yesterday was indeed forthcoming in trying to provide a framework which would enable the Committee to acquire information it is seeking without waiving privileged communications and without getting into waiving the attorney-client privilege, a well-recognized privilege of course in the law and one which I think this Committee should respect.

I think the proposal that was put forth, which was discussed yesterday for most of the day, was forthcoming to the Committee and was a way to resolve this matter without undertaking a path which may intrude into the attorney-client privilege.

This is a complex area of the law. There's no question about it. It's not an area in which one can make off-the-cuff judgments and it seems to me that before the Committee starts down this path, that we should have had a careful examination of the legal questions involved in the attorney-client privilege. Including, if we sought it, a legal brief or memorandum from Mr. Kendall and also, of course, an analysis by the Office of Senate Legal Counsel. There's some very complicated questions here. I think the Committee faces these situations.

First, we had an offer that I think would have enabled the Committee to obtain all the relevant information without invading the attorney-client privilege. And second, if the Committee intends to start down the path of invading the attorney-client privilege, it seems to me that we ought to have the benefit of a more thorough and comprehensive legal analysis of that issue than we have heretofore received.

There are very clear, legitimate claims of attorney-client privilege. There are important questions of the scope of it, the nature of its coverage, and who is covered by it. But I think those are issues that the Committee should have examined before it proceeded to the point of issuing the subpoena.

So my view, very simply, is we had the offer of a framework which I thought was a positive framework for dealing with this matter. I regret that that was not accepted. Second, if you are

going to reject it and move on, I think before that is done, the Committee ought to have the benefit of the kind of legal analysis of this question which I have indicated I think ought to be necessary.

The CHAIRMAN. Senator Shelby.

OPENING COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Mr. Chairman, first of all, I want to commend you for your tenaciousness as the Chairman of this Committee in seeking this information. This information could be central to this entire investigation that's going on here.

Why should we ask is it central or could be central? In that information we are seeking that came out of that November 5 meeting between these people at the White House where William H. Kennedy III took extensive notes of a meeting, a very crucial meeting regarding possibly information that came into their hands or was gleaned by them improperly.

If this Administration, Mr. Chairman, doesn't have anything to hide, they ought to open this up. They shouldn't hide behind so-called privilege. We know of another Administration that did this some 20 years ago, and we know what happened. It erodes public trust in the White House.

People are going to already think, and more so, that they have something to hide. If they haven't got something to hide here, they ought to be forthcoming. They shouldn't come up and say, well, we are going to present a framework where we are going to give you just a little bit of this information or we are going to redact this and we are going to hide this.

This is not an ordinary proceeding. This goes to the very integrity of this Administration. It's that simple. It's central to this. I believe if the White House were getting good advice, unless they have something so bad in these files, admissions that would really blow the top off of this investigation that's been going on, or even if they do, they ought to be forthcoming with the American people.

Mr. Chairman, I commend you for your leadership.

The CHAIRMAN. Senator Hatch.

Senator DODD. Mr. Chairman, can I be heard?

The CHAIRMAN. Well, I'll recognize Senator Hatch, and then I'll—oh, I'm sorry, Senator Dodd, then Senator Hatch. We'll keep it—

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Thank you, Mr. Chairman.

The CHAIRMAN. Certainly.

Senator DODD. Mr. Chairman, I think the die has been cast on this. We will go through some statements here, and if we could divorce ourselves, for a moment, from the case at hand, because I do think as a Committee here we have a burden to bear, not just in terms of how we handle this particular situation, but I am deeply concerned about what is occurring in this town repeatedly year after year. More special counsels and independent investigators and Committees. Every single dispute seems to immediately explode into this approach. And I will tell you, we are on a bad track in my view, a bad, bad track.

It involves Members of our own colleagues, it involves every agency that comes up. We've got to be far more mature, it seems

to me, in looking at these things and try and find ways to resolve these disputes so that we can come to some conclusion.

Now, all of us on this Committee understand and appreciate the importance of the attorney-client privilege. We also are all understanding here of the politics of it. Anytime anyone stands up here and invokes that, there is an immediate patina that someone's trying to hide something. We all know it, we've seen it, we've seen it with other people. It just is automatic. Happens in the private sector, happens in the public sector. Unavoidable.

Yet I think we all appreciate, as well, that that is a deeply enshrined and deeply held view of this right of people to be able to protect themselves when they talk to their lawyers.

We are talking about the First Family here, we are talking about the Presidency, and so it has a, the pyrotechnics around it obviously are obvious.

But I just urge my colleagues to think. What we have normally done in these situations where we have been potentially on a road to a constitutional confrontation between the Executive and Legislative Branch, is to try and find some way to resolve it.

Now, we have the Executive Branch coming forward here, offering some solutions on how we can get the necessary information the Committee needs without violating the attorney-client privilege and putting some court into the position of choosing between the Executive and Legislative Branches.

And these matters always come back, you start extending the envelope further and further. In this case, it's this particular Administration. Next week, next month, it's one of our colleagues, it's a Committee, it's some other agency, it's the next Administration.

At some point, we've got to have an historical perspective here about what we do and the road we travel. Despite the temptation, the lure and the excitement, the giddiness we engage in when we see someone sort of dangling there, because we've got them on the ropes. We've got them in that dreadfully ugly photograph, sitting there huddled with their attorneys, trying to figure out how not to answer something because it falls into the area of attorney-client privilege.

Now, I gather this isn't going to make much difference what I say to you here, but it's dangerous the road we're going down. It's very, very dangerous and we are building up precedents here that I think come to hurt us.

So I would urge that we try, over the next few days, this is Friday, see if the Committee and their staff with the White House Counsel can't find some way to try and resolve this by Monday to see if we can't get closer and come to the point the Chairman is I think legitimately trying to get at here.

It seems to me we ought to do that without going through these confrontations. I appreciate the views of those who have, boy, we've got them on the ropes now. We've got those headlines, we've got this thing working for us here politically. But think beyond those headlines, think about next month, next year. Think about a couple of years from now when we come back to these issues and the precedents are set in this area.

So, Mr. Chairman, I would urge to delay a vote on this to see if we can't reach some agreement here. The Senator from Maryland

is absolutely correct. This is a very delicate point, it is a serious point, attorney-client privilege, and to see if there isn't some way to come to closure so that we get the information the Committee needs without having to go down this particular path.

The CHAIRMAN. I first of all want to say that I certainly do appreciate the Senator's comments, and I am not going to disagree.

Indeed we have, and I believe the Senator would acknowledge that we have worked to avoid these kinds of conflicts, not only with the White House but even with other people, people not in Government directly, to attempt to recognize their rights and privacy et cetera, and we have delayed even this particular vote because we did attempt to work out an accommodation.

It is my intention to go forward with a vote. However, let me say this. They will still have an opportunity to submit any legal memo on this, and they still will have an opportunity and I advise and instruct Counsel that if there is a manner in which we can work this out to avoid a constitutional test and satisfy the needs, legitimate needs of this Committee, they are to do so. They are to be instructed to do so.

Senator Hatch.

OPENING COMMENTS OF SENATOR ORRIN G. HATCH

Senator HATCH. Thank you, Mr. Chairman. I am glad to hear that. I don't think there's any giddiness on this side, nor do I know anybody on the ropes right now. Frankly, this is a constitutional issue that is of great import and something that is very important to us all.

I understand that the White House claims that the November meeting is privileged by analogizing the White House to a corporation and President Clinton is the CEO. If I understand it correctly, they suggest, or at least somebody has, that if a CEO has done something wrong that might have corporate overtones but then it turns out to be a personal matter, he has the right to have his corporate attorneys meet with the personal attorneys. This is a faulty analogy.

Neither the DC Circuit nor the Supreme Court have ever held that the White House and the White House Counsel are at all analogous to a corporation or corporate counsel. And even if we were to accept this analogy, that would imply that at one point, Whitewater was seen by the White House to involve matters involving the institution of the Presidency and public issues. If that is true, then why doesn't the White House admit this? And if it is true, then why hasn't the White House asserted executive privilege and not attorney-client privilege?

Mr. Chairman, you asked me to, and I take no pleasure in this, I guess in a sense, I have helped foment this because of the questions I asked Mr. Kennedy the other day. But they are important questions and these are very important issues.

I don't think the White House necessarily has to be disadvantaged by obeying the law. And you have asked me to kind of cover this issue, so if I can, I will try to do so in an expeditious but yet as thorough manner as I can in these few minutes.

And as I understand it, former Associate White House Counsel William Kennedy asserted his right of attorney-client privilege in

refusing to answer this Committee's questions on Tuesday, December 5.

As it is generally defined, the attorney-client privilege only protects communications between a client and his attorney made in anticipation of litigation. I don't think that's here. The privilege can be asserted only by the client, meaning in this case, President Clinton, on behalf of the——

Senator DODD. Is the Senator correct in that analysis?

Senator HATCH. Yes, I am.

Senator DODD. Well,——

Senator SARBANES. I never heard that attorney-client was limited only to litigation matters. That's not accurate.

Senator HATCH. No, you can—let me finish.

The communication is protected by the attorney-client privilege only, in my opinion, if it meets those requirements. Now a client can lose the privilege, either by intentionally waiving the communication or by disclosing it to a third party.

Let's say, even if you're right, it isn't made in anticipation of litigation or of legal problems. Even so, it's protected only if it, you know, you can lose the privilege either by intentionally waiving it or by disclosing it to a third party.

While serving as Associate White House Counsel, Mr. Kennedy attended a meeting on November 5, 1993, to discuss Whitewater. Jim Lyons, Bernie Nussbaum, Bruce Lindsay, David Kendall, Neal Eggleston, and Steve Engstrom, all lawyers, were at the meeting.

Those representing the Office of the President and the United States were Nussbaum, Eggleston, and Kennedy. Lawyers representing the President in a personal capacity, as I understand it, were Kendall and Engstrom. Mr. Lyons had previously represented the Clintons in a personal capacity.

Mr. Lindsay did not serve in the White House Counsel's Office at the time but rather served in the White House Personnel Office. To say that he represented the Office of the President in a legal capacity at this meeting is dubious at best.

Mr. Lindsay testified before this Committee on Tuesday, November 28, and stated, "The purpose of this meeting was Whitewater Development Corporation," but he refused to elaborate further.

The privilege can only be asserted by the client. The White House Counsel's Office instructed Mr. Kennedy to assert attorney-client privilege over the meetings and discussions on November 5, 1993. The White House must have been acting under the authority of the President.

Now while working as Associate White House Counsel, Mr. Kennedy was, and admits that he was, a Government employee. Under Ethics Rules, Government attorney employees cannot take private clients while on Government time, even if that private client happens to be the President. Therefore, the attorney-client privilege cannot apply to personal matters that are discussed between the President and Government lawyers.

President Clinton has a private attorney, a Mr. Kendall of Williams & Connolly. There could not have been a private attorney-client relationship between the President and Mr. Kennedy, at least relating to the President's private legal affairs.

Even if Mr. Kennedy had an attorney-client privilege with the President in the past, the only thing that could be protected would be communications between the client and Mr. Kennedy himself. Thus, past communications on Whitewater between the President and Mr. Kennedy might arguably be protected but current conversation on Whitewater could not be protected.

According to Mr. Kennedy, no one present at the meeting communicated with the President during that meeting. No one examined any written memoranda from the President or drafted any to him. Thus, there were no oral or written communications between the attorney and client that could receive the privilege.

Last week, to complicate the matter worse, White House Spokesman Mark Fabiani, while addressing the press, answered two questions relating to the substance of Mr. Kennedy's November 5 meeting on Whitewater. Fabiani's information was apparently based on Mr. Kennedy's notes. Therefore, Fabiani waived the attorney-client privilege by divulging what happened during this meeting, if there was, in fact, an attorney-client privilege to begin with.

A client cannot exercise the privilege selectively, disclosing some of the contents of the document and refusing to disclose other contents, and certainly disclosing information to the press or press officer would result in the privilege being waived.

Now Mr. Kennedy could claim that his notes or the work of the meeting are protected by the work product privilege. The work product privilege protects an attorney's written work and his thoughts concerning a case involved in litigation by and large. This privilege can be overridden for, "good cause," such as an inability to acquire the documents from any other source.

The work product privilege could be overridden if the Committee cannot obtain them in any other way. And even though the President has promised to cooperate fully with this Committee and to be open on these issues with the American public, he is now attempting to assert a privilege over an important discussion concerning Whitewater matters.

No discussions Mr. Kennedy had while he was Associate White House Counsel are privileged, in my opinion. Mr. Kennedy's refusal to answer the question has no legal basis and is impeding the Committee's investigation. And the Committee, in order to fulfill its constitutional obligation, it seems to me, needs to issue the subpoenas if we can't get this material in any other way.

This is basically a question of institutional integrity. That's what it comes down to.

I may have misspoken a little bit here, and I think it was fair for you to point out that the attorney-client privilege can arise in other circumstances other than in anticipation of litigation. So I probably did go too far there. But for providing legal advice, that point doesn't really matter for the purpose of asserting attorney-client privilege. The points that I have made are still valid. There just isn't any attorney-client privilege in this instance. I don't think anybody can effectively argue that there is.

And frankly, even if you did argue that there is, what's wrong with being forthcoming and giving the information that basically everybody knows must have come from that particular meeting or must have arisen out of that particular meeting?

The CHAIRMAN. I know there are a number of my colleagues, and I thank the Senator, and I did ask him to review this matter. I know there are a number of Senators and I do not intend to cut anybody off. I'm going to let them all have an opportunity to speak to the issue.

The fact of the matter is, there are a number of my colleagues who have planes to catch, and will be leaving within a matter of minutes. I intend to, as it relates to the question of the issuance of subpoenas, ask Mr. Chertoff to explain the other three subpoenas, then take the matter to a vote, and then we'll take statements.

Mr. Chertoff.

Mr. CHERTOFF. Mr. Chairman, in addition to the subpoena—

Senator SIMON. Mr. Chairman. There are only two or three of us here, and we'll make our comments brief, but I think our colleague from Illinois—

The CHAIRMAN. Senator Simon, I'm asking you to please respect the fact that I have some Members who are going to be leaving.

Senator SIMON. I understand, and I will just take a minute, but I think we ought to have the debate before we vote, and not after we vote.

[Laughter.]

The CHAIRMAN. Senator, I understand but in fairness to the Chairman and to the Committee, and I say to the Chairman, this has been an issue that we have discussed now over a period of days. I have put off a vote on this so as to attempt to resolve this without the necessity of having this vote. It's not a question that we are just putting this through without there being sufficient debate. Some of my colleagues are going to have to leave.

I also leave open this, at the suggestion of Senator Dodd, and I don't take it lightly, that indeed, if there is an opportunity and if the White House is able to satisfy their counsel to satisfy their concerns and our concerns, we will proceed without the issuance of a subpoena.

Go ahead, Senator.

Senator SIMON. I shall be briefer than you, Mr. Chairman.

First of all, the White House should be as forthcoming as possible without setting bad precedents. Second, I think we have to be careful that we don't set bad precedents. Frankly, and I don't mean this critically of anyone, if I had been at the meeting when we sent this letter to Mrs. Clinton, I would have voted against it. I think it is a very bad precedent.

For a democracy to function effectively, people have to use self-restraint. That's true of people in the White House, that's true of Members of the U.S. Senate. I think we're going down a path that is not going to be viewed as a good one for the future of our country. I'm going to vote no.

Senator SARBANES. Would the Senator yield for just a second?

Senator SIMON. Be pleased to yield.

Senator SARBANES. Mr. Chairman, I just want to make the observation that the need for careful legal briefing of this issue before the Committee started down this path I believe was amply demonstrated in Senator Hatch's comments, that the attorney-client privilege applied only in anticipation of litigation, which he subse-

quently corrected at the end of his statement. But that was the premise of his statement.

I think it just underscores——

Senator HATCH. I just overspoke.

Senator SARBANES [continuing]. The complexity of the issue. None of us pretends, I don't think, to be an expert on this particular subject matter.

Senator MURKOWSKI. Mr. Chairman, just five words.

This wouldn't be necessary if we had, from the White House, the degree of material and the forthrightness that we had asked for, and I think the Chairman is quite correct in his proposal that it might not be necessary if they choose to cooperate. I believe it's just as simple as that, and I would urge that we go ahead with a vote.

The CHAIRMAN. I am going to ask Counsel to describe the other three subpoenas and then we will vote on all four subpoenas.

Mr. CHERTOFF. Mr. Chairman, the first subpoena is what I have previously described as the one to Mr. Kennedy for his notes, returnable on December 12. Two subpoenas have been prepared for the Committee that would be returnable, require appearances of witnesses at 9:30 a.m. on December 13. One is directed to Mr. William Burton, and the other is directed to Ms. Sylvia Matthews. These do not require the production of documents, they require personal appearance before the Committee to give testimony.

Briefly, Mr. Chairman——

Senator SARBANES. Well, the ones I have in front of me are December 12.

Mr. CHERTOFF. I'm sorry. I believe we have corrected it. I believe there is a later version of December 13 which is Wednesday at 9:30 a.m.

The CHAIRMAN. Will you see to it that the Senators have the subpoena with respect to Mr. Burton and Ms. Matthews, Wednesday, December 13.

Senator SARBANES. We've got it.

The CHAIRMAN. Would you see to it that Mr. Ben-Veniste has.

Mr. CHERTOFF. Mr. Chairman, to explain the significance of this. In the letter we received yesterday, indicating that perhaps the phone call to the mystery number was really to Mr. McLarty's office and that Mr. Burton had a recollection of talking to the First Lady, that's why we are calling Mr. Burton. Ms. Matthews was present during the entire period in the office.

Finally, the last subpoena, which is for an appearance at 9:30 a.m. on December 14, which is next Thursday, is to Ms. Thomases. Again, it does not require the production of records. The reason is self-evident based on what we've discussed earlier.

Senator SARBANES. Do we have reason to think that Ms. Matthews would not come voluntarily? I mean why are you placing her under a subpoena?

The CHAIRMAN. It's been the judgment of——

Senator SARBANES. I mean she has been, I thought, an extraordinarily cooperative witness.

The CHAIRMAN. The judgment of the Chair, as it relates to Susan Thomases, where we have had a representation that she was to appear on a Monday, and could not Thursday. Then we find out that

she couldn't make it Monday. We attempted to set it up for Wednesday when her counsel said she could be here, then we were told, no, she couldn't be here on Wednesday, she was coming back from Brazil. And so we even went the further step of moving this to the Thursday.

The Committee should not be played with or dealt with in a manner that is less than candid and straightforward. If indeed Sylvia Matthews and her representative or attorney says that she can be here, I will instruct the Counsel, and gives us an agreement that she can and will be here, not to go forward with the subpoena. But in lieu of that, I'm going to ask that we issue subpoenas en bloc, as enumerated by Counsel, and ask for a vote on it.

At this time, I would ask the Clerk to call the roll.

Senator SARBANES. Mr. Chairman, I want a separate vote on the Kennedy subpoena.

The CHAIRMAN. You want a separate vote on the Kennedy subpoena?

Senator SARBANES. The other subpoenas, I take it, you are going to contact the parties, and if they can come, you are not going to serve the subpoena.

The CHAIRMAN. No, not Ms. Thomases.

Senator SARBANES. Matthews, Matthews.

The CHAIRMAN. Ms. Matthews, that's correct.

Senator SARBANES. She was a very cooperative person.

The CHAIRMAN. That's absolutely correct. But as it relates to Susan Thomases, I am going to ask that we have two separate votes. We will first vote on the Kennedy, and then we will vote on Thomases.

The subpoena as it relates to William Kennedy and the production of his records as called for in the subpoena.

Senator SARBANES. Well, Mr. Chairman, I'll make it easy for our colleagues. I'm prepared to support the other subpoenas.

The CHAIRMAN. OK.

Senator SARBANES. We could just do that by voice vote.

The CHAIRMAN. As the Ranking Member and the Chairman have agreed that the subpoenas will be issued as it relates to Ms. Thomases, Mr. Burton, and Ms. Matthews.

Senator SARBANES. But you're going to ascertain on Matthews.

The CHAIRMAN. We will ascertain on Burton and Matthews if they can and will be here.

Ms. Thomases the subpoenas will issue.

Now, as it relates to Mr. Kennedy and his documents, the Clerk will call the roll.

The CLERK. Senator D'Amato?

Senator D'AMATO. Aye.

The CLERK. Mr. Shelby?

Senator SHELBY. Aye.

The CLERK. Mr. Bond?

Senator BOND. Aye.

The CLERK. Mr. Mack?

Senator MACK. Aye.

The CLERK. Mr. Faircloth?

Senator FAIRCLOTH. Aye.

The CLERK. Mr. Bennett?

Senator BENNETT. Aye.

The CLERK. Mr. Grams?

Senator GRAMS. Aye.

The CLERK. Mr. Domenici?

Senator DOMENICI. Aye.

The CLERK. Mr. Hatch?

Senator HATCH. Aye.

The CLERK. Mr. Murkowski?

Senator MURKOWSKI. Aye.

The CLERK. Mr. Sarbanes?

Senator SARBANES. No.

The CLERK. Mr. Dodd?

Senator DODD. No.

The CLERK. Mr. Kerry?

Senator SARBANES. No by proxy.

The CLERK. Mr. Bryan?

Senator SARBANES. No by proxy.

The CLERK. Mrs. Boxer?

Senator SARBANES. No by proxy.

The CLERK. Ms. Moseley-Braun?

Senator SARBANES. No by proxy.

The CLERK. Mrs. Murray?

Senator SARBANES. No by proxy.

The CLERK. Mr. Simon?

Senator SIMON. No.

The CHAIRMAN. The ayes are 10, the noes are 8, the Committee will issue the subpoena.

Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

I have a statement and I am going to keep it brief.

It has become obvious to the Committee and the American people that what we have today and what we are dealing with is a White House coverup.

The actions of the White House yesterday in dealing with the requests of this Committee was absolutely outrageous. The Committee asked the White House to come with four simple questions. They failed to answer the questions in the week that we gave them. Then, in responding to the Committee, they released their answer to the press before they released it to the Committee. The press had it yesterday afternoon. We got it at 8 p.m. last night. The handling of this Committee by the White House has become a disgrace and an insult to the integrity of the Committee.

About the mysterious phone number itself. The White House could have answered these questions a long time ago, but they didn't; they stonewalled. They didn't want the Committee to know the full extent of Mrs. Clinton's involvement in the handling of Vince Foster's office the night of his death, and she apparently was in total charge.

Second, Mr. Chairman, the issue of the notes on November 5, in which Mr. Kennedy and Mr. Lindsay were participants, if you'll remember, it was a total stonewalling and this has taken place by witnesses that this meeting on the 18 and 19—on the 18, was lit-

erally the missing 18 minutes of the Whitewater meeting. It is comparable to the 18 minutes of the Watergate hearings. It's the missing 18 minutes and we need to find it.

I think it is because they got together and gave out marching orders as to how they could block and cover up the White House and cover up David Hale's getting close to the President.

I think we need to ascertain if there were more meetings. Mr. Kennedy said this was the first one he had been invited. He said he hadn't been invited to one before. I think if there were others that he hadn't been invited to, we need to find out about them.

And I'm looking forward to questioning Mr. Burton and what he had to say to Mrs. Clinton on the night of the telephone call.

Thank you.

The CHAIRMAN. Senator Bennett.

[No response.]

Senator Murkowski.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Mr. Chairman, it seems to me to be appropriate to enter into the record of the hearing today, the December 8, Wall Street Journal article, "Subpoena Time" Review & Outlook and I would ask that that be entered into the record.

I refer specifically to one paragraph, if I may. It reads as follows:

So we have the spectacle of a President ordering officials paid by taxpayers not to answer questions from the rest of the Government about what they discussed with the private attorney defending his private interests in the midst of an Independent Counsel's investigation of potential criminal violations.

I certainly am sensitive to Senator Dodd's concerns. I am also sensitive to the obligation of this Committee to proceed with information when we, through an orderly process that was established by both the Chairman and the Ranking Member to get the information, and we have reached a point where we cannot get the information as a consequence of an extraordinary set of circumstances that suggest that I don't recall, I don't remember, I don't have an independent recollection, to the point where this has become necessary.

So, Mr. Chairman, I think it's appropriate that the action taken by the Committee in issuing the subpoenas is the only alternative to gather the necessary information so that this process can continue and reach a conclusion.

Thank you.

The CHAIRMAN. I thank the Senator.

Before yielding to Senator Sarbanes for any comments he might want to make, I think it is regrettable that we've reached a point where I think some basic fundamental good faith working together has not been achieved. I am particularly distressed at the lengths we had to go to before we began to get any information as relates to the 202 telephone number, the so-called mystery phone number.

I think that common sense would have called upon the representatives of the White House, and I don't put it at the door of Ms. Sherburne, because she's not the person who makes these decisions, but whoever made the decision should have made it a long time ago to say, hey, by the way, this is the telephone number. Not wait until the 11½-hour until we get down to crunch time as it re-

lates to getting a specific—I mean, they're operating like the CIA. Unless you ask the absolute precise question, did John Jones himself enter the building, you ask do you know of anybody, no they won't tell you. But if you say John Jones, with particularity, then they say yes, but you didn't ask John Jones. I mean, it's just incredible.

That is not in good faith, and you can take that back to your representative, Ms. Sherburne. It's not directed at you because that's above your pay grade.

That kind of thing, sending us documents regularly at 5:00 o'clock, 6:00 o'clock, I mean, after the hours. It does not create a climate.

Notwithstanding I say that this Senator and this Committee stands ready to work in a cooperative manner to avoid, if possible, those kinds of clashes that will be inevitable if we keep what I believe to be a stonewalling attitude as it relates to Ms. Thomases. Her conduct to date and her testimony before this hearing has been totally lacking.

She would have us believe that she doesn't remember anybody that she's talked to. The only people she ever talked to at the White House were some people that she was attempting to give comfort to, and even those people she doesn't remember.

As the evidence continues to mount and the facts extracted, we should have been well down this road. We should have had this concluded and with any cooperation, could have been into the other phase. The sad story is, we're going to be accused of dragging this out, or supposedly, we're going to lose interest in what we have to do. We're not going to lose interest. The Chairman and the Committee is not going to give up. We're going to do our job.

And certainly if we could have some cooperation as it relates to those areas that we can and are entitled to cooperation and the American people, it would be a better process for all, a much better process to follow.

So I'm sorry that it's come to this. We attempted to avoid it, but I hope it underscores the determination to do what we have to do.

Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I want to point out that it's very easy to sort of portray the White House as not cooperating. That doesn't square with the tremendous amount of information that they have provided to this Committee.

Now the proposal made yesterday by Mr. Kendall was an effort to allow the Committee to get information and yet preserve the attorney-client privilege. I thought it was a good faith effort to do that.

Senator Faircloth earlier said, well, I want to find out whether they were given marching orders to come out of that meeting in order to go out and obtain information.

Mr. Kendall very specifically yesterday recognized that as an area in which the Committee could ask whether, after the meeting, White House officials undertook to obtain such information.

In other words, the very thing that Senator Faircloth fastened on here as something he wanted to know, Mr. Kendall, in his effort to try to accommodate the needs of the Committee and protect the attorney-client privilege, indicated in the proposal he made yester-

day would be a matter we could inquire as to whether these people, after that meeting, undertook to obtain such information.

We would have them before us. That would not be subject to an attorney—there's no meeting there. You just say, what did you do afterwards? Did you go out and try to get this information?

So that would take care of this so-called question that was raised by Senator Faircloth.

I thought that was a good example of trying to meet the needs of the Committee as it proceeds with its inquiry with respect to information.

Now, let me turn to this question of the interrogatories. I am willing to be disabused of this view if in fact the facts will sustain it, but my understanding is that they have had difficulty making this identification with respect to this telephone number and its use and function.

In fact, you wrote to Ms. Sherburne on the 5th suggesting that maybe this phone was part of the White House Communications Agency as a secure telephone line. I mean, we were trying to sort of provide, I gather, someone on the staff thought that might be its use and so we were providing them some information to try to help them identify it.

In her letter, they've now identified it as an unlisted trunk line that rang on the White House switchboard. And it was there so calls could be made if the main switch failed and also as a means of getting through when the switchboard was overloaded, as I understand it. We have now ascertained that was this number and that was the purpose of the number.

Now, we would then have some other information here that also pertains to the interrogatories, and I understood that an effort would be made by Mr. Kendall to have that from Mrs. Clinton in the form asked for by the Committee in the next day or so, either today or tomorrow.

That seems to me reasonable. I mean, you can try to make a large thing out of it I guess to somehow say that the First Lady is uncooperative because it wasn't here yesterday. I don't see that myself, and there's been some difficulty ascertaining the number.

Finally, the answer of course to Senator Simon's question that was put earlier is that it is completely unprecedented to have propounded interrogatories to the First Lady, and I think the Committee needs to be mindful of that as we move along this course.

The CHAIRMAN. I am going to indicate and have a sense that the Committee was taken advantage of. In any good faith effort, the questions as it relates to that number could have been answered informally. If it was only a staffer undertaking and saying, this might be a secure number. Calling the White House, spending several days, and then prompting it by a follow-up letter after he was told that they would give him no more information, that we got this response.

I think it's hardly credible to think that the White House could not have determined that this was a White House line. It just doesn't jive, given the questions raised as to who was this number assigned to. There was a deliberate decision by people at the White House to withhold and not to come forth to the public and/or to this Committee, in the absence of a direct, specific request.

I want to share with you, as we have informally other things, those things that might be of an exculpatory nature that, by the way, that this is the number.

Senator SARBANES. I see no basis on which it can be asserted that there was a deliberate decision to withhold.

Ms. Sherburne has furnished this letter now providing this important information. As I understand it, we will shortly be receiving answers to the interrogatories.

The CHAIRMAN. When you finally hit the critical mass and you come to the point of saying and prompting by saying, did you make a phone call to this number, who is the number listed to, I would suggest, and then as a result of the letter going out——

Senator SARBANES. It's not listed to anyone.

The CHAIRMAN. —going out at or about that time, that the White House made a determination that they could no longer continue to stonewall this for whatever reason.

Why would you not provide this—you were searching the records to find out that this used to be a secure White House line. That's not unbelievable, it's not credible. I mean you don't really believe that, do you?

Senator SARBANES. I'm prepared to believe it until I get information that disabuses me of it.

The CHAIRMAN. Well, we could ask Ms. Sherburne.

Ms. Sherburne, were you looking to ascertain this number for a long time?

[Pause.]

Senator SIMON. Mr. Chairman, why doesn't, for the purpose again just to have Ms. Sherburne introduce herself to the Committee.

The CHAIRMAN. Ms. Sherburne, just for the purpose——

Ms. SHERBURNE. You'll have to excuse my voice.

The CHAIRMAN. OK.

OPENING STATEMENT OF JANE C. SHERBURNE SPECIAL COUNSEL TO THE PRESIDENT

Ms. SHERBURNE. My name's Jane Sherburne, as you know, and I am Special Counsel to the President. And we have tried and have, like you, been very interested in determining what this phone number is.

We thought you would be thrilled with our response, Mr. Chairman. We tried very hard to determine, and it wasn't until your staff, through some ingenuity that we weren't capable of, determined that there may be something we could pursue that we had not thought of. In fact, this was not a secure line that was a WHCA line, but the lead that your staff gave us——

Senator SIMON. Why don't you explain to them what a WHCA line is?

Ms. SHERBURNE. A WHCA line is the White House Communication Agency, which is the agency that operates the White House telephone system. But rather this was a number that we were then able to determine by asking a series of questions, was a number that Bell Atlantic had assigned to us.

You have subpoena authority. You have subpoenaed Bell Atlantic. This is not something that turned up in your subpoena of Bell

Atlantic, as I understand it. We don't have subpoena authority of Bell Atlantic. This was something that because of the lead that was provided by your staff, we were able to determine. We are appreciative of that, and we were able to run this down. We let you know within hours of having known it. And as I had represented to Mr. Chertoff, this was not something that we released to the press before we sent the letter to the Committee.

Mr. BEN-VENISTE. Mr. Chairman, may I point out that we issued a subpoena, in fact two subpoenas, I believe, to Bell Atlantic, the Company which issued this number, and they were unable to provide us with a response.

The CHAIRMAN. I know that, Mr. Ben-Veniste, and I don't mean to beat this to death, but I have to tell you something. I find it difficult, and I do not lay this to Ms. Sherburne, I want you to understand that, that nobody at the White House, understanding this was not something, a question asked In Camera in a private proceeding. This is not a question that was not well-known.

It was a 202 number. It was a question of a call coming from the Rodham house that nobody knew or could say, oh, by the way, that was a number that we would use in the event there was, as the letter indicated, an overload on the switchboard. I mean, it's just, it doesn't dovetail. It doesn't jibe. Now I'm not disputing the fact that this is when you ascertained this to be the kind of line that you've indicated.

I do raise the question that there were people who know whether they used that line and whether that line indeed was a White House line, and that we should have been told this a long time ago. That's what I'm saying. It's only common sense.

So to get into the fact that, yes, we questioned, I was going to bring the telephone guy in myself and say to him, what are you telling me, you don't know who this line was assigned to?

Obviously on these kinds of lines, there is some kind of agreement or what-not. They don't tell people where it is, or they don't keep a listing, et cetera. I haven't gotten down to that, but I was going to bring him in. And it was only because a staffer of mine did make some inquiries, and when he called somebody, he said, oh, yeah, that's a particular kind of line, and then you were notified, I'm sure that they told you my staffer was calling, and I'm sure that you got the letter and went further, but—I do not question, now understand this, I do not question Jane Sherburne, your integrity and your furnishing this information to us when you were given it, but I do say that there were other people who knew about this who should have been more forthcoming, should have given you that information, should have fed it to the Committee, should have said, by the way, this is what the line is, this is where we got the information. It didn't take place.

Ms. SHERBURNE. Mr. Chairman, the information that your staff had turned out to be wrong, but it did enable us to determine—

The CHAIRMAN. It got us in the right direction, though, didn't it.

Ms. SHERBURNE. —and furthermore, I am not sure what you believe may have been withheld from you, but I take responsibility for the White House response on this. We tried vigorously to determine that there weren't people that remembered the specific phone number, and it was only—

The CHAIRMAN. You are being overly generous and protective, and I tell you it's a great thing to have that kind of loyalty. There were people who knew about this number, who used this number, and people in addition who knew that other people used this number, who should have told you. Therefore, you were not dealt with fairly.

But in any event, the Committee stands in recess until 11 a.m., Monday.

[Whereupon, at 11:25 a.m., the Committee was recessed to reconvene on Monday, December 11, at 11 a.m., in the same place.]

[Appendix supplied for the record follow:]

1614

APPENDIX

DEL-06-1995 20:11

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Benito Romano

New York
Washington, DC
London
Paris

December 6, 1995

BY FACSIMILE & U.S. MAIL

The Honorable Alfonse M. D'Amato
 The Honorable Paul S. Sarbanes
 Special Committee to Investigate Whitewater
 Development Corporation and Related Matters
 534 Dirksen Senate Office Building
 Washington, D.C. 20510

Re: Telephone records of Susan P. Thomases

Dear Senators D'Amato and Sarbanes:

As you know, over the last five months Ms. Thomases has voluntarily produced a variety of telephone records to the Special Committee.

On August 10, 1995, Special Committee associate counsel Viet D. Dinh requested Ms. Thomases' residential telephone records for July 20-22, 1993 and July 26, 1993. On August 30, 1995, counsel Robert J. Guiffra supplemented that request to include records of credit card calls made to and from Ms. Thomases' Washington, D.C. hotel on the same dates. Responding to these requests on September 5, 1995, we stated that Ms. Thomases no longer had possession of her residential records for that period and that billing for any credit card calls would have been done through Ms. Thomases' residential service. Thereafter, it was confirmed that the telephone company no longer maintains records for this period.

This seemingly put an end to what we believed was a diligent search for these records. However, yesterday I learned from my associate, who was reviewing firm files for another purpose, that portions of certain telephone records responsive to the Special Committee's requests had been discovered as attachments to an expense report of business-related calls submitted by Ms. Thomases months after the July, 1993 period.

In particular, the associate identified an expense report prepared for Ms. Thomases on September 24, 1993, months

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after the period for which records had been sought by the Special Committee. The attachments to this expense report reflect not only the business-related calls for which reimbursement was sought, but also several telephone calls that appear to come within the Special Committee's requests for information, for which reimbursement was obviously not sought.

Accordingly, we are producing these documents (Bates numbered ST0000117 to ST0000120) herewith, one day after their discovery, to demonstrate again Ms. Thomases' desire to cooperate fully with all reasonable inquiries from the Special Committee.

The discovery of these expense report attachments was entirely unexpected. Indeed, until yesterday we were completely unaware of their existence because our initial search for Ms. Thomases' July, 1993 telephone records -- which included several requests to the telephone companies themselves -- naturally did not include a review of Ms. Thomases' expense reports for late September, 1993, because they were not considered a likely source of relevant information.

At the time of the search of these records, Ms. Thomases had no specific recollection of the existence of these expense reports or the attached telephone records, and had instructed that all such records for the period being investigated by the Special Committee be reviewed for responsiveness. The failure to discover these records sooner stems solely from the fact that the particular expense report containing the partial telephone records was submitted well beyond the period of interest to the Special Committee. In the search of our records the persons delegated the task of searching simply did not consider the possibility that a telephone record containing business-related calls submitted months later could also contain information of interest to the Special Committee. (Should the Special Committee desire a more detailed written explanation of the recovery of these documents, we are prepared to submit statements by those involved.)

We would note that the information reflected in these records bolsters Ms. Thomases' previous testimony on a number of subjects of interest to the Special Committee, including:

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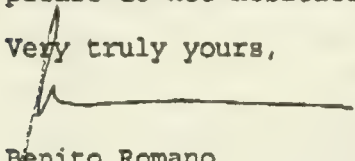
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- Ms. Thomases' effort to contact Margaret Williams after learning of Mr. Foster's suicide¹;
- Ms. Thomases' apparently unsuccessful attempt to contact the First Lady on the night of July 21, 1993²; and
- Ms. Thomases' recollection of speaking to the First Lady early in the day on July 22, 1993.³

Moreover, a review of Ms. Thomases' testimony on these and other subjects reveals that in each case where additional records have come to light, Ms. Thomases' core recollections have been repeatedly reaffirmed. Indeed, there is no material discrepancy or contradiction between any record produced to the Special Committee and what Ms. Thomases has been saying all along about her actions and motivations in the days surrounding Vincent Foster's suicide.

Should you have any questions concerning the foregoing, please do not hesitate to contact me.

Very truly yours,


 Benito Romano

Enclosure

¹ See ST0000118 (attached); see also Thomases' 8/8/95 Hearing Testimony at p. 192 ("I reached out for Maggie Williams . . . I probably called Signal [the White House switchboard] to find her.").

² See ST0000117 (attached); see also Thomases' Deposition at p. 69 ("I have no specific recollection but I have reason to believe that sometime late in that day before I went to bed, I tried to reach [Mrs. Clinton]. I don't know whether I was successful.").

³ See ST0000117 (attached); see also Thomases' 8/8/95 Hearing Testimony at p. 205-05 ("I think I spoke to [Mrs. Clinton] earlier in the day that day, but I can't tell you exactly when I spoke to her.").



Account Number: 212

712 725

August 25, 1993

Page 1

This portion of your bill is provided as a service to MCI Telecommunications. There is no connection between New York Telephone and MCI Telecommunications. You may choose another company for your long distance telephone calls while still receiving your local telephone service from New York Telephone.

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Summary of MCI Telecommunications charges

Itemized calls	\$12.70
State and local surcharges	.32
Federal Tax (3%)	.60
Total	\$13.62

Itemized calls**Calling card calls**

No.	Date	Called from	Called to	Time	Rate	Min.	Amount
Calling number 212-							
1.	JUL 21	WASHING CC 202 [Hotel]	NEW YORK NY 917 [Business]	10 12 PM	DAY	2	\$1.10
✓ 2.	JUL 21	WASHING CC 202 [Hotel]	LITTLE ROCK AR 501 [Rodham Res.]	11 00 PM	NIGHT	1	.94
3.	JUL 21	WASHING CC 202 [Hotel]	NEW YORK NY 212 [Home]	11 08 PM	NIGHT	10	2.10
4.	JUL 22	WASHING CC 202 [Hotel]	PARK RIDGE NJ 201 [Friend]	7 10 AM	NIGHT	29	4.44
✓ 5.	JUL 22	WASHING CC 202 [Hotel]	LITTLE ROCK AR 501 [Rodham Res.]	8 25 AM	DAY	4	1.78
6.	JUL 22	WASHING CC 202 [Hotel]	NEW YORK NY 212 [Home]	9 02 AM	DAY	7	2.34
Sub Total							13.70
Total							\$13.70

REDACTED

ST 0000117

12-06-95 08:09PM P005 #34

ACI

Account Number: 212

775 723

August 25, 1993

Page 2

Long Distance continued

Calls from 212

No.	Date	Time	Place	Area-Number	Min.	Amount
1	JUL 29					
2	AUG 08					
3	AUG 08					
4	AUG 08					
5	AUG 08					
6	AUG 09					
7	AUG 09					
8	AUG 09					
9	AUG 12					
10	AUG 12					
11	AUG 12					
12	AUG 12					
Total Calls						

Calls from :

No.	Date	Time	Place	Area-Number	Min.	Amount
13	JUL 15					
14	JUL 17					
15	JUL 17					
16	JUL 21	12:07AM	TO WASHINGTON	DC 202		
17	JUL 21	01:08AM	TO WASHINGTON	DC 202		
18	JUL 21	07:00AM	TO WASHINGTON	DC 202		
19	JUL 21	08:53PM	TO WPALMBEACH	FL 407		
20	JUL 23					
21	JUL 27					
22	JUL 27					
23	JUL 29					
24	JUL 29					
25	JUL 30					
26	JUL 30					
27	AUG 03					
28	AUG 04					
29	AUG 09					
30	AUG 09					
31	AUG 09					
32	AUG 09					
33	AUG 10					
34	AUG 12					
35	AUG 12					
36	AUG 12					
37	AUG 12					
38	AUG 12					
39	AUG 13					
40	AUG 13					
Total Calls						

Total Long Distance

46.40

REDACTED

ST 0000118



Account Number: 212 713 723
 July 25, 1993
 Page 2

Itemized calls, continued

Calling card calls

No.	Date	Called from	Called to	Time	Rate	Min.	Amount
Calling Number 212- AT&T CALLS CHARGED TO A NEW YORK TELEPHONE CALLING CARD							
1.	JUL 01						
2.	JUL 02						
3.	JUL 03						
4.	JUL 04						
5.	JUL 07						
6.	JUL 10						
7.	JUL 11						
8.	JUL 12						
9.	JUL 13						
10.	JUL 14						
11.	JUL 14						
12.	JUL 14						
13.	JUL 15						
14.	JUL 15						
15.	JUL 16						
16.	JUL 20	PHILA PA 215 [Business]	NEW YORK NY 212 [Home]	6 22 PM	E/E	2	1.10
17.	JUL 20	ROCKLAN ME 207 [Family]	NEWPORT RI 401 [Friend]	10 27 PM	E/E	29	5.13
18.	JUL 21	WASHING CC 202 [WH Switchboard]	DEVONSHIRE MA 809 [Business]	4 20 PM	OS	5	12.90
19.	JUL 21	ALEXAND VA 703 [Bus./Public]	NEW YORK NY 212 [Office]	3 06 PM	DAY	1	1.02
20.	JUL 22	PORTLAN ME 207 [Family]	NEW YORK NY 212 [Home]	10 15 PM	E/E	18	3.62
21.	JUL 22	PORTLAN ME 207 [Family]	NEWPORT RI 401 [Friend]	10 42 PM	E/E	1	.96

Notes: 88-01a1 Standard
 Indicators: 8 Multiple rate

REDACTED

ST 0000119

DEC-06-1995 20:13

WILLKIE FARR 45 FAX DEPT

212 821 8111

P.008/008

CELLULAR ONE

Account Name: SUSAN THOMAS

Mobile Number: 917-

Rate Plan: CONTRACT PREFERRED

DETAIL OF ROAMER CHARGES

ROAMER SURCHARGES:

7/14 DAILY SURCHARGE FROM WASHINGTON, DC WIRELINE	3.00
7/21 DAILY SURCHARGE FROM WASHINGTON, DC WIRELINE	3.00
7/22 DAILY SURCHARGE FROM WASHINGTON, DC WIRELINE	3.00
7/27 DAILY SURCHARGE FROM WASHINGTON, DC WIRELINE	3.00
7/28 DAILY SURCHARGE FROM WASHINGTON, DC WIRELINE	3.00
	<u>15.00</u>

ROAMER CALL CHARGES:

CALLS TO	NO. CALLED	DATE	TIME PERIOD	MINUTES	CHARGES		TAX	TOTAL
					AIR	LAND		
Calls from WASHINGTON, DC WIRELINE								
OPERATOR	0	7/14						
OPERATOR	0	7/14						
NEW YORK NY		7/14						
OPERATOR	0 202- [Williams F/21	7/22	933P	2	2.00	2.000	.22	2.22
OPERATOR	0 212- [Office]	7/22	306P	1	1.00	1.000		2.30
OPERATOR	0 202- [FLORUS	7/22	308P	1	10.00	10.000	1.10	22.30
NEW YORK NY		7/27						
NEW YORK NY		7/28						
			Subtotal =	23.0	23.00	1.32	1.65	25.97
			Total =	23.0	23.00	1.32	1.65	25.97

CALL CHARACTERISTICS: 0=OPERATOR ASSISTED

DETAIL OF CALL CHARGES

REF	LINE	CALLS TO	NO. CALLED	DATE	TIME PERIOD	MINUTES	AIR	LOCAL LAND/	TOTAL	
								LONG DISTANCE		
	1	NEW YORK NY	212- [Office]	7/25	146P	1	2	1.100	.120	1.220
	2	SUMMIT NJ	908- [Bus.]	7/25	148P	1	2	1.100	.120	1.220
	3	QUEENS NY	718- [Car Svc]	7/25	152P	1	3	1.550	.120	1.670
	4	NEW YORK NY	212- [Office]	7/25	523P	1	2	1.100	.120	1.220
	5	WASHINGTON DC	202- [P. Solis	7/25	524P	1	3	1.550	.650	2.200
	6	NEW YORK NY	212- [Home]	7/25	523P	1	5	2.750	.300	3.050
	7	WASHINGTON DC	202- [W H Sch	7/25	523P	1	3	1.550	.650	2.200
	8	NEW YORK NY	917- [Bus.]	7/25	535P	1	1	.550	.060	.610
	9	FREEDHOLD NJ	908- [Bus.]	7/25	537P	1	2	1.100	.120	1.220
	10	NEW YORK NY	212- [Home]	7/25	539P	1	1	.550	.060	.610
	11	NEW YORK NY	212- [Home]	7/25	541P	1	1	.550	.060	.610
	12	BRIDGEHPTN NY	515- [Bus.]	7/25	541P	1	1	.550	.060	.610
	13	BRIDGEHPTN NY	515- [Bus.]	7/25	543P	1	7	3.850	.420	4.270
	14	BROOKLYN NY	212- [Bus.]	7/25	551P	1	1	.550	.060	.610
				7/28						
				7/23						
				7/28						

*Indicates Long Distance Charges

TOTAL P.008

12-06-95 08:09PM P008 #31

REDACTED

DEC-07 95 19:56 FROM: COMMUNICATIONS

2024561213

TO: 92280020

PAGE: 02

THE WHITE HOUSE
WASHINGTON

December 7, 1995

BY TELECOPY

Michael Chertoff, Special Counsel
Richard Ben-Veniste, Minority Special Counsel
United States Senate
Special Committee to Investigate Whitewater
Development Corporation and Related Matters
534 Dirksen Building
Washington, D.C. 20510-6075

Gentlemen:

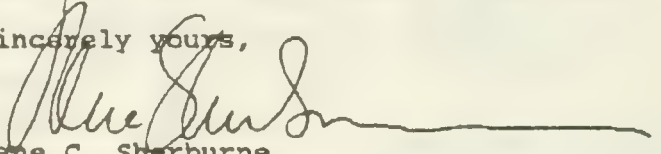
This letter is in response to the Chairman's letter of December 5, 1995, seeking information regarding the telephone number (202) 628-7087. We have learned that, from February 5, 1993, through January 20, 1994, the telephone number (202) 628-7087 was an unlisted trunk line that rang on the White House switchboard, which was at the time in Room 09 of the Old Executive Office Building. The number was installed as a bypass to the main White House switch, so that calls could be made from the White House in the event the main switch failed. The number was also used as a means to get through to the White House when the switchboard was overloaded, and may have been provided to certain individuals for that purpose.

We have no records reflecting with whom the caller to that number at 11:41 p.m., EDT, on July 20, 1993, was connected. However, we understand that Bill Burton remembers receiving a call in the Chief of Staff's office from Mrs. Clinton on the evening of July 20 and speaking with her about Vincent Foster's death.

In response to the Chairman's specific suggestion in the December 5 letter that the telephone number may have been used by the White House Communications Agency (WHCA) as a secure telephone line, WHCA has confirmed that the telephone number was not assigned to it.

Please feel free to call me if you have any questions.

Sincerely yours,


Jane C. Sherburne
Special Counsel to the President

2024561213

12-07-95 06:58PM P002 #49

WSJ 12/8/95

REVIEW & OUTLOOK

Subpoena Time

The issue of White House stonewalling is now headed for the courts. Both Senator Alfonse D'Amato of the Senate Banking Committee and Rep. William Clinger of the House Government Oversight Committee are threatening subpoenas in the face of White House stonewalling of their investigations.

Senator D'Amato wants to know more about a meeting on November 5, 1993, to discuss Whitewater. The two-hour meeting was hosted by Donald Kendall, the Clinton's private attorney at Williams & Connally, the Beltway's topflight criminal defense firm. James Lyons, the Denver lawyer who handled Whitewater during the Presidential campaign, also attended, as did another Clinton personal attorney, Steve Erikstrom. Also present were a number of lawyers on the government payroll: Bernard Nussbaum, then White House Counsel. William Kennedy III, then associate counsel. Bruce Lindsey, now deputy counsel. And Neil Eggleston, then associate counsel.

This legal firepower assembled shortly after White House officials had obtained confidential information about Resolution Trust Corp. criminal referrals that mentioned the Clintons in connection with the failed Madison Guaranty, the savings and loan owned by Clinton Whitewater partner James McDougal. Senator D'Amato and his committee are curious about whether confidential governmental information was passed along to the private defense team. (Aren't you?)

Asked about this, Mr. Lindsey and Mr. Kennedy refuse to answer. Mr. Kennedy said he had to be careful to follow White House "instructions." The White House has been careful not to claim "executive privilege"; not only would that smack of Nixonian stonewalling, but the White House would also have to implausibly claim that Whitewater concerned weighty affairs of state. So the witnesses are instead contending that they cannot tell Congress what took place at the meeting because of attorney-client privilege.

This is even more preposterous than an executive privilege claim. To begin with, the attorney-client privilege has to be claimed by the client, not his lawyers. At the very least, President Clinton should himself assert the privilege and not hide behind White House lawyers. But the privilege only protects communication between an attorney and a client, and Mr. Clinton wasn't present at the November 1993 meeting. In any event, neither Mr. Lindsey or Mr. Kennedy were attorneys for Mr. Clinton; they were government officials.

So we have the spectacle of a President ordering officials paid by taxpayers not to answer questions from the rest of the government about what they discussed with the private attorney defending his private interests in the midst of an independent counsel's investigation of potential criminal violations. Senator D'Amato's committee plans to vote this morning on subpoe-

nas for notes and other documents relating to the meeting.

Meanwhile, Rep. Clinger is threatening to issue subpoenas to Harry Thomason, the President's Hollywood pal who orchestrated the White House Travel Office firings. He's been refusing to turn over records on the scandal, hiring superlawyer Bob Bennett to say he won't cooperate with "a political fishing expedition" that is designed to "embarrass the White House." Mr. Bennett also happens to represent President Clinton, having won a ruling burying the Paula Jones sexual harassment case until after the next election. The legal nightmare Mr. Thomason's Travel Office putsch caused for Billy Dale, the office's former director, is described nearby by John H. Fund.

In the face of the subpoena threat, Mr. Thomason finally did turn over 200 pages of material this week. But they are woefully incomplete. For example, Mr. Thomason turned over his meeting records for only an 11-day period in May 1993, when the Travel Office firings occurred. But Rep. Clinger needs more to establish if Mr. Thomason's role in the White House made him a special government employee subject to ethics laws. More negotiations with Mr. Bennett are under way.

Two White House aides are also refusing to meet with investigators for Mr. Clinger's committee unless Democratic staffers are present. Rep. Clinger, citing several recent leaks of

sensitive information from the committee, says that's inappropriate. So the Travel Office investigation has proceeded without the testimony of Patsy Thomasson and Catherine Cornelius, who may have removed key documents from the Travel Office.

On yet a third front, federal Judge Royce Lamberth is weighing sanctions against the White House and Justice Department in ongoing litigation about the secrecy of Mrs. Clinton's health care task force. Calling government arguments for exemption from open-meeting laws "preposterous," the judge ruled for the plaintiffs, the Association of American Physicians and Surgeons. The association has asked that the Clinton administration to pay its \$350,000 in legal bills. It's also asked the judge to prescribe ethics classes for the government's lawyers, including Mrs. Clinton, "an experienced lawyer with governmental experience who supervised directly the task force." The government's response brief has just been delivered.

Both the New York Times and the Washington Post have editorialized this week that the stonewalling should cease, and even Democrats in Congress are advising that stonewalling Congressional committees is a political loser. Yet the Clinton White House goes from one cockamamie excuse to the next, with a constant drain on what little credibility it retains.

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

MONDAY, DECEMBER 11, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE THE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 11:15 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

I ask our witnesses to please stand for the purposes of the oath. [Whereupon, Margaret Williams, Robert Barnett, Ingram Barlow, and Diane Blair were called as witnesses and, having first been duly sworn, were examined and testified as follows:]

The CHAIRMAN. Thank you, Mr. Barlow, Mr. Barnett, Ms. Williams, and Ms. Blair. If you have any statement that you would like to make, we would be pleased to take it. Mr. Barlow?

Mr. BARLOW. I don't have any statement, Senator.

The CHAIRMAN. Mr. Barnett?

Mr. BARNETT. Thank you, Mr. Chairman. I have no opening statement.

The CHAIRMAN. Ms. Williams?

Ms. WILLIAMS. I have no statement.

The CHAIRMAN. Ms. Blair?

Ms. BLAIR. I have no statement.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Ms. Williams, I want to direct your attention back to that period of time between July 20 and July 27, 1993, which was the period, the week following Vincent Foster's death. And just to put you in perspective and refresh your recollection, we have had your testimony previously about the events of the evening of Mr. Foster's death, including your appearance at Mr. Foster's office in the White House. We have had testimony about the following day, the 21st. We have had testimony about the 22nd, which was the Thursday in which Mr. Foster's office was searched first by Mr. Nussbaum in the presence of law enforcement officials and then later by you and Mr. Nussbaum separately.

Then we have carried over into the following week, including Monday the 26th, which is the date in which it was reported that the torn-up pieces of paper had been found in Mr. Foster's briefcase, and then the 27th, which is the day on which you testified in our previous hearings that the documents which you had taken up to the residence, the Foster documents, were taken up to the residence on Thursday the 22nd, were finally picked up by Williams & Connolly.

**SWORN TESTIMONY OF MARGARET A. WILLIAMS
ASSISTANT TO THE PRESIDENT AND
CHIEF OF STAFF TO THE FIRST LADY**

Ms. WILLIAMS. That's 7/20—that's the——

Mr. CHERTOFF. The 27th, the Tuesday. They were in the residence for 5 days. Let me ask you first of all, Ms. Williams, whether during that weekend you had occasion to be at the White House.

Ms. WILLIAMS. During the weekend of the——

Mr. CHERTOFF. The 24th and 25th, the intervening weekend between the time you took the documents up to the residence on Thursday and the time you picked up the documents or the documents were picked up the following Tuesday.

Ms. WILLIAMS. Well, I have no recollection. As I said in my deposition, I did not think that I had been at the White House. I did not recall going to the White House. However, I have seen the entry log since that time and they show that on Sunday, the 25th, that I was in the residence for a short period of time. I don't recall how long.

Mr. CHERTOFF. Fourteen minutes?

Ms. WILLIAMS. Pardon? I'm sorry.

Mr. CHERTOFF. Fourteen minutes, does that help refresh your memory?

Ms. WILLIAMS. Uh-huh.

Mr. CHERTOFF. According to the entry log, you were in the residence at the White House between 2:36 in the afternoon, leaving at 2:50 in the afternoon. What were you doing in the residence for 14 minutes on that Sunday?

Ms. WILLIAMS. I don't recall what I was doing, but because I am often at the residence and often in the White House complex during the weekend, Saturday and Sunday, I don't recall, but it doesn't strike me as highly unusual. As I said in my deposition, I did not recall being there. I don't think that I was there, but it doesn't strike me as extraordinary that I was there.

Mr. CHERTOFF. It's the only period of time that weekend that you were in the residence. Can you tell us what errand you had that took 14 minutes to complete?

Ms. WILLIAMS. I do not know what I was doing. I could have been picking something up. I could have been dropping something off. I don't know what I was doing.

Mr. CHERTOFF. Well, that's the question. Is there something you recall picking up or dropping off during that 14 minutes?

Ms. WILLIAMS. No. As I said, it would not be extraordinary for me to come into the White House or into the residence during the weekend, something I had forgotten, I don't know, but it would not be extraordinary. I'm in and out of there quite a bit.

Mr. CHERTOFF. Did you see Mrs. Clinton?

Ms. WILLIAMS. I don't recall seeing her, but it wouldn't have been extraordinary for me to have seen her.

Mr. CHERTOFF. It wouldn't have been extraordinary for you to have seen her on that Sunday. Is that your testimony?

Ms. WILLIAMS. My testimony is that I don't recall seeing her, but it would not have been extraordinary.

Mr. CHERTOFF. Your testimony over the summer, and I'm reading from page 144 of your deposition, was, at line 7:

Question: Did you have contact with the President or the First Lady on Saturday or Sunday?

Answer: No, I don't think so.

Question: No?

Answer: No, I don't think so.

Question: No communication of any sort?

Answer: Not that I can recall. I don't recall.

Are you now altering that to tell us that it's possible that you had contact with her during that 14-minute period on that Sunday?

Ms. WILLIAMS. I don't believe that there's any alteration in my testimony. I don't recall. What I said is that it would not have been extraordinary to have seen her.

Mr. CHERTOFF. Now, on the following Tuesday, you encountered Mr. Barnett in the residence; correct?

Ms. WILLIAMS. That's correct.

Mr. CHERTOFF. Where was Mr. Barnett?

Ms. WILLIAMS. Somewhere on the second floor of the residence, as I recall.

Mr. CHERTOFF. And what kind of—describe what kind of premise this is on the second floor of the residence?

Ms. WILLIAMS. The Lincoln bedroom, the Queen's bedroom, a greeting hall and then a sitting room, family sitting room and a kitchen.

Mr. CHERTOFF. Mr. Barnett was talking with Mrs. Clinton?

Ms. WILLIAMS. That's what I recall.

Mr. CHERTOFF. Were they seated or standing?

Ms. WILLIAMS. I don't recall.

Mr. CHERTOFF. You happened to walk by and run into them?

Ms. WILLIAMS. Well, I was in and out of the residence as the logs recall. I was there earlier in the morning and in the afternoon.

One of the things that might be useful, if I could take a moment, Mr. Chairman, is to describe a little bit about what goes on in the residence and what a big place it is. It is both the home of the First Family and at the same time, it is also used as quarters for entertaining. It is also used for some meetings that are official, I suppose. And there are a number of guest rooms on the third floor.

So it would not be extraordinary for me to come to the White House, not see Mrs. Clinton, go about my business in the residence, talking to other people who might be there for some other reasons and not see Mrs. Clinton. On the other hand, you know, it's perfectly—since it is her home, that she might be walking around or sitting, as I was coming through.

Mr. CHERTOFF. Let's not focus on what is or isn't extraordinary. Let's focus on Tuesday the 27th.

Your testimony is you are in the residence for some purpose unrelated to the documents; is that correct?

Ms. WILLIAMS. My testimony is that I was in and out of the residence all day that day.

Mr. CHERTOFF. You have to listen to the question and you have to answer the question I ask, not the one you want me to ask but the one I am asking. Were you in the residence when you ran into Mr. Barnett for anything related to the documents?

Ms. WILLIAMS. To my knowledge, no.

Mr. CHERTOFF. You were there for something else?

Ms. WILLIAMS. I don't recall what, but I was in and out, as I said before. I was in and out of the residence most of the day on Tuesday doing a number of things.

Mr. CHERTOFF. I'm going to stop you, Ms. Williams.

You have to answer the question I ask you. Were you in the residence at the time you bumped into Mr. Barnett for something else other than the documents?

Ms. WILLIAMS. The first part of that question was I was in the residence when I saw Mr. Barnett, correct. I have answered that.

Mr. CHERTOFF. You were there for something else besides the documents?

Ms. WILLIAMS. I don't recall what I was there for. I was in and out of the residence all day.

Mr. CHERTOFF. I'm going to ask that we put the deposition from July 7, 1995, on the videotape at page 145, and I think you have a copy that's been furnished to you.

The CHAIRMAN. Page 145.

Mr. CHERTOFF. Do you have a copy in front of you? I believe it is July 7, 1995.

Question: How did you come to see Mr. Barnett?

Answer: He had come to see Mrs. Clinton.

Question: About what?

Answer: I don't know.

Question: He was in the residence?

Answer: Yeah, he was in the residence.

Question: And you were called?

Answer: No, I had come up to the residence for something else.

Question: And you bumped into him?

Answer: Yeah, I saw him. And he said, you know what? It would make sense to get those documents over to the office.

Is that correct?

Ms. WILLIAMS. That's correct. That's my deposition.

Mr. CHERTOFF. Mr. Barnett, why did you go to the residence on the 27th?

SWORN TESTIMONY OF ROBERT BARNETT, PARTNER WILLIAMS & CONNOLLY, WASHINGTON, DC

Mr. BARNETT. Mr. Chertoff, on the 27th I went——

The CHAIRMAN. Mr. Barnett, pull the microphone up closer to you.

Mr. BARNETT. Sorry, Mr. Chairman. Is that better?

The CHAIRMAN. Yes, it is.

Mr. BARNETT. I'm sorry. Mr. Chertoff, my best recollection is that I went over to the residence on the 27th to pick up the documents.

Mr. CHERTOFF. So you went over for the specific purpose of picking up the documents?

Mr. BARNETT. That is my best recollection.

Mr. CHERTOFF. Who did you arrange to do that with?

Mr. BARNETT. I spoke with Ms. Williams about picking up the documents. Who made the exact entry permission, I can't be sure, Mr. Chertoff. I think it was Capricia Marshall, but I'm not sure.

Mr. CHERTOFF. You spoke to Ms. Williams before you came over?

Mr. BARNETT. At some point during that period of time, of days, I did speak with her, yes.

Mr. CHERTOFF. Before you came over?

Mr. BARNETT. Yes.

Mr. CHERTOFF. And you made an arrangement with her to meet her in order to pick up the documents?

Mr. BARNETT. That is my best recollection.

Mr. CHERTOFF. Ms. Williams, is that what happened?

Ms. WILLIAMS. That's not my best recollection.

Mr. CHERTOFF. Now, Mr. Barnett, when you came into the White House and whoever let you in, whoever admitted you, where did you go?

Mr. BARNETT. I first went up to, I believe, Mr. Chertoff, the second floor, and I waited for a period of time, and then I went to the third floor, and we carried out the transfer of documents.

Mr. CHERTOFF. Let's take it step by step, Mr. Barnett. Why did you go to the second floor?

Mr. BARNETT. That's where I was escorted and told to wait is my best recollection.

Mr. CHERTOFF. Who were you waiting for?

Mr. BARNETT. I was waiting for Maggie Williams.

Mr. CHERTOFF. In fact, Maggie Williams came up and met you there?

Mr. BARNETT. That's my best recollection.

Mr. CHERTOFF. Did you speak to the First Lady during the period of time you were waiting?

Mr. BARNETT. I have absolutely no recollection of seeing the First Lady or speaking with the First Lady on that day. I cannot rule it out. It's 2½ years later, but I have no recollection of seeing her on that day, Mr. Chertoff.

Mr. CHERTOFF. Ms. Williams, do you remember specifically seeing Mr. Barnett with the First Lady when you bumped into them?

Ms. WILLIAMS. "Bumped" is not my word, but I remember seeing Mr. Barnett with the First Lady. That's my recollection.

Mr. CHERTOFF. The First Lady was there when Mr. Barnett said let's go get the documents?

Ms. WILLIAMS. I believe that's so.

Mr. CHERTOFF. And Mr. Barnett, your recollection is you don't have any such recollection?

Mr. BARNETT. That's my best recollection, Mr. Chertoff.

Mr. CHERTOFF. Now, Mr. Barnett, you then went up to the third floor with Ms. Williams?

Mr. BARNETT. Correct.

Mr. CHERTOFF. Where did Ms. Williams take you?

Mr. BARNETT. We went to a room on the third floor. It's hard to define the location. It was on, as I remember, the front side. If you come off the elevator, you turn left. It's sort of right straight ahead. If you had a map, I could probably point it out to you. It is in that area of the third floor.

Mr. CHERTOFF. It was just you and Ms. Williams, nobody else?

Mr. BARNETT. That is correct.

Mr. CHERTOFF. What did you do then?

Mr. BARNETT. We went to that room. My recollection is, as we sit here 2½ years later, that this was the first time that I had seen Ms. Williams since the funeral. I believe that we spent some time talking about Mr. Foster, about the Foster family, those kind of discussions. That's again, my best recollection.

We then went to a closet in that room. Ms. Williams either had or secured a key. We opened the closet and in the closet was a box with the files in it.

Mr. CHERTOFF. You pulled the box out?

Mr. BARNETT. My recollection is that I either—the box was on the floor. I either sat down on a chair and looked at the box in that way or I picked up the box and I put the box on a desk, table, whatever you might call it, and looked at them in that way. I just don't really recall specifically.

Mr. CHERTOFF. The box was unsealed; correct?

Mr. BARNETT. The box was unsealed, correct.

Mr. CHERTOFF. Was there any kind of index or any kind of an inventory with the box?

Mr. BARNETT. There was not.

Mr. CHERTOFF. Ms. Williams was with you while you removed the box?

Mr. BARNETT. Yes.

Mr. CHERTOFF. She was with you while you opened the box.

Mr. BARNETT. Yes.

Mr. CHERTOFF. You started to go through the files?

Mr. BARNETT. I would not say "go through the files." Let me describe exactly what I did because it's caused some misunderstanding, so let me be accurate and answer it myself.

I opened the box. In the box were two dozen, maybe more files. Most of them, but not all of them were labeled. I went through the labels. The unlabeled files, as I recall, I took out and looked at to see what they were. I may have also taken out one or more of the labeled files to look at them briefly as to what they were. But let me be clear. Everything that was in the box when I received it was back in the box when I taped it up.

Mr. CHERTOFF. So everything that was in the box, that you found in the box when you opened it, you put back in the box when you taped it?

Mr. BARNETT. Absolutely.

Mr. CHERTOFF. Did you make an inventory or record of any kind of what was in the box?

Mr. BARNETT. Later.

Mr. CHERTOFF. Not on the spot?

Mr. BARNETT. Not on the spot.

Mr. CHERTOFF. Ms. Williams was present in the room with you as you went through this procedure of reviewing the files.

Mr. BARNETT. I can't say, Mr. Chertoff, she was there the whole time. She was certainly there part of the time, but I can't honestly say she didn't go about doing other business or something. I really don't recall.

Mr. CHERTOFF. How long did it take you to go through these records?

Mr. BARNETT. At that time on that day?

Mr. CHERTOFF. Right.

Mr. BARNETT. I would say I spent maybe 5 or 10 minutes undergoing that process I just described to you, but that's an estimate.

Mr. CHERTOFF. During that period of time, did you run across a file that you gave to Ms. Williams and suggested maybe it ought to remain at the White House rather than be taken over to Williams & Connolly because it really related to official business?

Mr. BARNETT. At that time, I don't recall that, no. Can you be more specific?

Mr. CHERTOFF. Was there a file relating to the residence or improvements at the residence or at the White House that you identified as being more appropriately held at the White House rather than removed at that time?

Mr. BARNETT. I don't remember that, no. I don't remember that. I have a vague recollection now that you mention it of at some later date talking with someone in the White House Counsel's Office. It may have been Stephen Neuwirth, but I certainly am not sure of that about such a file and what was in it, but I don't, Mr. Chertoff, recall that discussion being—having taken place on the 27th, no.

Mr. CHERTOFF. When do you recall that discussion having taken place?

Mr. BARNETT. Sometime later, within a—days or weeks after, but it's only a vague recollection.

Mr. CHERTOFF. Now, when you were—I want to put a timeframe on this. You come up to the second floor. How long are you waiting for Ms. Williams?

Mr. BARNETT. I would estimate, Mr. Chertoff, that I was waiting maybe 20, 25 minutes. That would be my best estimate, but I cannot be totally sure of that.

Mr. CHERTOFF. Let me try to help you out. You are admitted to the second floor according to entry records at 3:03 p.m. Ms. Williams comes at 3:20 p.m. That's approximately 17 minutes.

Mr. BARNETT. That could be right. May I say something about those logs, please—

Mr. CHERTOFF. Sure.

Mr. BARNETT. —for a moment? I'm familiar with those logs obviously, you've given me a copy. It is my recollection, as I sit here today, that I was there about 35, 40 minutes, maybe 45 minutes. I was very surprised when those logs reflected that I was there 90 minutes. I have no basis to impeach those logs. I don't know who keeps them. I don't know if they're contemporaneous. I don't know if they're computer-generated. I have no idea. But as I sit here today, and as I sat there wherever it was in my office when I first learned about these logs, I thought that was much longer than I was there, I must tell you.

Mr. CHERTOFF. Let's try to go through it. Around 3:20 p.m., Ms. Williams comes up and you go up with her to the third floor and then you spend some time talking about Mr. Foster; correct?

Mr. BARNETT. That's my recollection.

Mr. CHERTOFF. And that's why you're standing around here on your way getting to the area where the records are held?

Mr. BARNETT. No, we may have done that actually in the room.

Mr. CHERTOFF. How long is that? Ten or 15 minutes perhaps?

Mr. BARNETT. Perhaps. Perhaps a little longer.

Mr. CHERTOFF. You're estimating maybe 10 minutes, maybe 15 minutes for purposes of reviewing the records.

Mr. BARNETT. Yes, approximately.

Mr. CHERTOFF. That would take us up to sometime before 4:00 p.m.; right?

Mr. BARNETT. Oh, Mr. Chertoff, I can't remember if it was 4:00 p.m. You're talking about 2½ years ago.

Mr. CHERTOFF. I'm just doing the math——

Mr. BARNETT. Do the math, but don't put times on it, please.

Mr. CHERTOFF. As soon as you tape up the box, where did you get the tape?

Mr. BARNETT. Wait. You've got to slow down.

Mr. CHERTOFF. Where did you get the tape?

Mr. BARNETT. I looked through the files, as I've described. I then said to Ms. Williams that I wanted to tape the box. She had to find some tape. I don't recall it being right there. I recall in my mind her having to go somewhere and get it, not a long period of time, but some period of time. I then taped the box closed securely.

Mr. CHERTOFF. Then what did you do?

Mr. BARNETT. Then we had to make arrangements to have the box picked up. It was, as I remember, an extremely hot day. I was not interested in carrying that box out of the White House, much less the three blocks to my office. So I called over to my office. I believe I called twice and talked—I don't remember if during the first call I talked to Mr. Barlow, I think I did. Mr. Barlow, who's seated to my right, is the head of our accounting department, a 20-year military veteran, a very trusted senior employee of our law firm, and I asked him—I can't remember in the first instance, but ultimately, I got to him to make arrangements to pick up the box. Then that conversation took place.

My best recollection is then there was a second conversation a little while later where we went through the mechanism of birth date, Social Security number, what gate are you coming to, how are you going to get cleared in, where does he report, who does he see, that whole suggestion.

Mr. CHERTOFF. Who did you have this second discussion with?

Mr. BARNETT. Mr. Barlow.

Mr. CHERTOFF. You're dealing with someone on the White House side in terms of getting Mr. Barlow admitted?

Mr. BARNETT. I believe, again, my best recollection at that point, Ms. Williams made the arrangements internally through the clearance office or whatever it's called to have Mr. Barlow accessed and that involved—or she called someone to do it. I don't really remember exactly, but that process happened and that took a few minutes.

Mr. CHERTOFF. You're relating the information about Mr. Barlow's background to Ms. Williams so she can coordinate on the internal side?

Mr. BARNETT. Not about his background. About his Social Security number and birth date. No, I didn't give her a biography.

Mr. CHERTOFF. You need to get someone cleared through. You're supplying the information to Ms. Williams.

Mr. BARNETT. That's my recollection.

Mr. CHERTOFF. And then what happens?

Mr. BARNETT. I believe we talked a little more.

Mr. CHERTOFF. Where were you at this point?

Mr. BARNETT. Still in the same place. And then at some point thereafter I left and I believe I went over to the West Wing.

Mr. CHERTOFF. Now, you left before you saw Mr. Barlow?

Mr. BARNETT. Mr. Barlow and I never crossed paths.

Mr. CHERTOFF. What was the way you left it? Who was Mr. Barlow supposed to see in the White House in order to pick up the box?

Mr. BARNETT. I don't remember, Mr. Chertoff. I think I arranged to have him coordinate through Ms. Williams to pick up the box, but in terms of the actual identity of the person he was supposed to see, I don't remember.

Mr. CHERTOFF. So you left it to Ms. Williams to maintain custody of the box and get it over to Mr. Barlow?

Mr. BARNETT. Correct.

Mr. CHERTOFF. And then you went over to the West Wing?

Mr. BARNETT. Correct.

Mr. CHERTOFF. To see who?

Mr. BARNETT. I've obviously tried to remember this. I had several ongoing matters that I was handling for the President and the First Lady, and I could have gone over there to talk with any one of a number of people about this. My best recollection, however, is that I went over there because I hadn't seen some of the people who worked most closely with Mr. Foster since his death. And my best recollection, Mr. Chertoff, is that I wanted to go over and see how some of them were. I believe I saw some of the secretaries over there. I may have seen some of the people in the Counsel's Office. I remember being over in that area there where the Counsel's Office is. But I don't have any specific recollection of which individuals I saw.

Mr. CHERTOFF. Did you see Mr. Nussbaum?

Mr. BARNETT. I don't remember seeing Mr. Nussbaum that day, but I can't rule it out.

Mr. CHERTOFF. Did anybody mention to you that pieces of paper had been found the day—that had allegedly been found the day before in Mr. Foster's briefcase?

Mr. BARNETT. No.

Mr. CHERTOFF. That subject never came up?

Mr. BARNETT. Not to my recollection.

Mr. CHERTOFF. With any of the people you spoke to in the Counsel's Office?

Mr. BARNETT. Not to my recollection.

Mr. CHERTOFF. I want to go back to your recollection of that day because when you testified here on July 7, you had a very specific recollection of what happened. This wasn't an "I don't recall" or even a one-word answer. You gave us a lengthy narrative and I

would like to put it back up on the board. It's page 145. Again, July 7, 1995. We're going to pick up where we left off. Do you have it?

Ms. WILLIAMS. I can see it.

Mr. CHERTOFF. Page 145:

Question: And what did you do?

Answer: He called someone.

That's Mr. Barnett.

Question: Who was that?

Answer: I don't know his name but—

Question: A messenger?

Answer: No. I think he was—I think he was an attorney.

Question: From Williams & Connolly and he made that call from the residence?

Answer: Yes.

Question: How long did it take this person to get cleared through?

Answer: Maybe a half hour or so.

Question: Did you wait there with Mr. Barnett while that happened?

Answer: Yeah. I may have—well, probably in and out. I may have gone to do something and come in. They were having a conversation. Mrs. Clinton and Mr. Barnett, but I had the key.

Is that still true, Ms. Williams?

Ms. WILLIAMS. That's my recollection.

Mr. CHERTOFF. Continuing on:

Question: The key to the closet?

Answer: Right.

Question: So Mrs. Clinton and Mr. Barnett were waiting in the residence for about half an hour while this person came from Williams & Connolly; right?

Answer: Yeah. I'd say it was about half an hour.

Question: And then this person came in; right?

Answer: Uh-huh.

Question: And then what happened?

Answer: I got on the elevator with him. I had them—I called somebody to get him cleared. He came to the Usher's Office which is where guests go. The Ushers called up to the residence. I picked up the phone. They said the guy was there. I went and got him, took him up to the third floor, opened the closet and told them that was the box.

Question: And where was Mr. Barnett and the First Lady at this time?

Answer: They were still down on the second floor.

Question: And what happened after this person had retrieved the box?

Answer: I took him back down to the Usher's Office.

Question: Did you stop and see Mr. Barnett or Mrs. Clinton at that point?

Answer: No.

Question: And that whole operation of going up to pick up the box and have this person leave took about 15 minutes?

Answer: Yeah, if that.

Question: Did you then go back and talk to Mr. Barnett and Mrs. Clinton?

Answer: No, I just think I did whatever else I was doing.

Question: You didn't arrange for Mr. Barnett to come over on that Tuesday; correct?

Answer: I may have cleared him through.

Question: You didn't ask him to come over?

Answer: Huh-uh.

Now, Ms. Williams, is it your testimony still that you were not with Mr. Barnett at the time that you looked through the box?

Ms. WILLIAMS. I don't have a recollection of that at the time that he looked through the box.

Mr. CHERTOFF. You were not with—was Mr. Barnett with you on the third floor with the box as he has testified or were you up there on the third floor with the box for the first time with the messenger as you have testified?

Ms. WILLIAMS. As I have testified, what I recall, what my recollection is, is that when I was on the third floor, the first time I was with the messenger. That's my recollection. That's what I remember.

Mr. CHERTOFF. Your testimony is that you went and got the messenger, took him to the third floor, opened the closet and told them that was the box. That's your testimony; correct?

Ms. WILLIAMS. That's the best of my recollection.

Mr. CHERTOFF. Now, Mr. Barlow, when you got to the White House, and you did go to the White House; right?

**SWORN TESTIMONY OF INGRAM BARLOW, COMPTROLLER
WILLIAMS & CONNOLLY, WASHINGTON, DC**

Mr. BARLOW. Yes, sir.

Mr. CHERTOFF. Where were you met by Ms. Williams?

Mr. BARLOW. As I recall, on the third floor.

Mr. CHERTOFF. You were directed to go to the third floor?

Mr. BARLOW. I was put on the elevator with an escort.

Mr. CHERTOFF. And an escort was a Secret Service officer?

Mr. BARLOW. No, it was a lady who met me over in the Old Executive Office Building and they escorted me over.

Mr. CHERTOFF. What was her name?

Mr. BARNETT. I don't recall.

Mr. CHERTOFF. Was it Carolyn Huber?

Mr. BARLOW. I don't recall.

Mr. CHERTOFF. When you got to the third floor, how did you get to where Ms. Williams was?

Mr. BARLOW. She was waiting for me when the elevator opened.

Mr. CHERTOFF. And she took you into a room?

Mr. BARLOW. First, she took me on a tour.

Mr. CHERTOFF. After the tour, she took you to a room?

Mr. BARLOW. Right.

Mr. CHERTOFF. Is that right?

Mr. BARLOW. That's correct.

Mr. CHERTOFF. Actually, it must have been a pretty short tour because you were apparently in that area only about 4 minutes. Where was the box?

Mr. BARLOW. The box was locked in the closet in a small room off the elevator.

Mr. CHERTOFF. So when you got into the room, the box was in the closet?

Mr. BARLOW. That's right.

Mr. CHERTOFF. And she opened the closet?

Mr. BARLOW. That's right.

Mr. CHERTOFF. What was the condition of the box? Was it taped or was it untaped?

Mr. BARLOW. It was sealed up in packing tape.

Mr. CHERTOFF. Ms. Williams, did you—Mr. Barnett, let me ask you, when you left the box, had you taken it off the desk and put it in the closet?

Mr. BARNETT. That's my recollection, or it stayed in the closet. I told you, I couldn't remember if I moved it or looked at it there, but it was certainly in the closet when I left.

Mr. CHERTOFF. But you had taped it up?

Mr. BARNETT. I had taped it up.

Mr. CHERTOFF. Mr. Barlow, your recollection is it was taped when you got there?

Mr. BARLOW. It was taped.

Mr. CHERTOFF. And Ms. Williams met you on the third floor?

Mr. BARLOW. That's correct.

Mr. CHERTOFF. Let me ask you this, Mr. Barnett. Other than receiving—you understood that the box you were receiving on this occasion were Vincent Foster files; is that correct?

Mr. BARNETT. That is not correct.

Mr. CHERTOFF. You knew they came from Mr. Foster's office?

Mr. BARNETT. Mr. Chertoff, you are making assumptions in your question that are unwarranted.

Mr. CHERTOFF. What was your understanding?

Mr. BARNETT. I was asked to take over a variety of personal legal matters for the President and the First Lady. I had been doing some, and I was asked to do more. I came over to secure files relevant to carrying out that work. I was not knowledgeable about where they came from, how they got there, or specifically what they were. It was certainly my understanding that not all of these but some of these were from Mr. Foster's office, but I was not on notice, if you will, that they were from Mr. Foster's office or where they were from. I was simply on notice that they were the files relevant to the work I was being asked to carry out.

Mr. CHERTOFF. Well, there were files there that were related to Whitewater. Was it your understanding that——

Mr. BARNETT. No, Mr. Chertoff. There was one file that had a label on it that said Whitewater.

Mr. CHERTOFF. And there were other files there that dealt with tax issues that mentioned Whitewater; is that correct?

Mr. BARNETT. That is correct.

Mr. CHERTOFF. Is it your testimony that when you picked up the box it was not your understanding that these were files that had come from Vincent Foster's——

Mr. BARNETT. You're not listening to my answer. It was certainly my understanding that some of those files came from Vincent Foster's office, but it was not my understanding that all those files came from Vincent Foster's office.

Mr. CHERTOFF. So you had the belief that some of the files may have come from elsewhere?

Mr. BARNETT. I didn't really know. I just knew that I was being asked to carry out some legal tasks and that these were the files that were relevant to those tasks.

Mr. CHERTOFF. Other than this occasion, was there any occasion before or after that your law firm received files that you were told or was indicated to you came from the late Vincent Foster's files?

Mr. BARNETT. During the course of my involvement with these matters, before Mr. Kendall took over from my law firm, there was one other occasion that I can recall, and it occurred on that very day. And I would be happy to describe it if you would like.

Mr. CHERTOFF. When you say "that very day," you mean July 27?

Mr. BARNETT. 1993, correct.

Mr. CHERTOFF. The same day you picked up the box?

Mr. BARNETT. Correct.

Mr. CHERTOFF. Tell us about that.

Mr. BARNETT. When I was over in the West Wing, one of the secretaries—I don't really remember which one—gave me a file, it was bright green, told me that it was a file—I believe she described it as in-transit, or in the process, or being processed, some words to that effect, at the time of Mr. Foster's death. That file was given to me with the individual saying to me that she understood that I would be handling those personal legal matters that Mr. Foster had been involved in and that that file would properly, therefore, be transferred to me.

Mr. CHERTOFF. What was in this in-transit file?

Mr. BARNETT. My best recollection what was in that file were some amendments to either/or the blind trust or the financial disclosure forms or both. My understanding is that some—I believe \$100 denomination bonds belonging to the Clintons' daughter had been found and that there was a need, therefore, to amend certain disclosure blind trust as a result. They had not been prepared by me. My recollection is they had been prepared by Brant Buck of the Rose Law Firm, and they were sent up. They had, as I remember tabs—sign here tabs—I'm sure you're familiar with those—and there were some backup materials related to that. But you've seen the files, so you know what's in it.

Mr. CHERTOFF. Did your firm receive other than that one additional file any other documents that you understood to be coming from the late Vincent Foster's files?

Mr. BARNETT. During the time I was involved, I recall no such transfer of files.

Mr. CHERTOFF. When did you stop being involved?

Mr. BARNETT. I stopped being involved in the fall of 1993.

Mr. CHERTOFF. To your knowledge, even after you had been involved, from any other source, do you know if Mr. Kendall received files from Vincent Foster's office relating to Madison Guaranty?

Mr. BARNETT. Mr. Chertoff, I have no idea. You have to address that question to others. I was not involved and, therefore, I didn't know.

Mr. CHERTOFF. I would like to just close this up. I would like to give to you a letter we have, we're going to put it up on the Elmo and hand it out, dated November 22, 1993, where Mr. Kendall from your firm who's sitting behind you, transmits to the Rose Law Firm—"I am enclosing herewith three file folders, labeled: Madison Guaranty Limited Partnership, Madison Guaranty—Net Worth—(1985) Preferred Stock Offering, and Madison Guaranty Preferred Stock Offering (Corporate), which were among the late Vincent Foster's files. They appear to me to be files of Rose Law Firm documents. I thought it most appropriate to transmit them to you, for retention and storage."

I want to ask you two questions, Mr. Barnett. How is it that Mr. Foster was keeping in his possession files relating to Madison Guaranty which was not a matter, to my understanding, was an ongoing issue that your firm or he was working on with respect to the Clintons?

Mr. BARNETT. Mr. Chertoff, I'm afraid that question is best addressed to Mr. Foster, and he is not here to answer it. I don't have an answer.

Mr. CHERTOFF. You don't know how it is he had those files?

Mr. BARNETT. I have no—let me finish—I have no knowledge of if or how he had those files.

Mr. CHERTOFF. How did those files, which were among the late Vincent Foster's files, get into the possession of your law firm?

Mr. BARNETT. They did not come to the possession of my law firm while I was involved in these matters, so you will have to ask others that question because I don't have an answer.

Mr. CHERTOFF. I see Mr. Kendall is behind you. He's the signatory of the letter. I know you're an agent for the firm. I don't know whether Mr. Kendall can enlighten us on this.

The CHAIRMAN. Well, we'll take up the question whether or not Mr. Kendall—

Mr. CHERTOFF. You don't know about this?

Mr. BARNETT. What's "this"?

Mr. CHERTOFF. You don't know about these Madison files that were contained among the late Vincent Foster's files and transmitted on November 27?

Mr. BARNETT. I am familiar with the fact that these files were transferred to the Rose Law Firm.

Mr. CHERTOFF. How are you familiar with that?

Mr. BARNETT. From hearing it around the firm but I was not personally involved, so I don't really have personal knowledge of it. But I am familiar with the fact that files were transferred back to the Rose Law Firm.

Mr. CHERTOFF. I was almost led astray here because we are not in court, so the rules about hearsay and personal knowledge don't apply.

Mr. BARNETT. I understand, but I am also trying to be accurate and to tell you that I was not involved in the receipt of those files.

The CHAIRMAN. Let me ask a question. Did there come a time, Mr. Barnett, that you became aware of the transfer of these files, the files in question as outlined in this letter?

Mr. BARNETT. I believe, Mr. Chairman, there came a time when I was familiar with the fact that Mr. Kendall transmitted those files to the Rose Law Firm, yes.

The CHAIRMAN. When was that? Was it before the transfer?

Mr. BARNETT. It probably was right around this date, Mr. Chairman. I don't remember specifically.

The CHAIRMAN. In other words, you were made aware of the fact prior to this transmittal letter that these files were transferred?

Mr. BARNETT. No, I am not sure that it was prior, Mr. Chairman. I am honestly not. It may have been after the fact. I remember hearing this—I remember hearing this incident, but I don't have any specific recollection of it.

The CHAIRMAN. Mr. Chertoff, are you about to wrap it up?

Mr. CHERTOFF. Yes, I was going to ask Mr. Barnett, from what you heard, where did these files come from? How did they come to your law firm?

Mr. BARNETT. My best recollection is that they came to our law firm from Mr. Hubbell, but I could be mistaken on that. That's my best recollection.

Mr. CHERTOFF. Do you know how it is that Mr. Hubbell would have had a set of Madison folders that were in the late Vincent Foster's files?

Mr. BARNETT. No.

Mr. CHERTOFF. I think my time is up, Mr. Chairman.

The CHAIRMAN. OK. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

The CHAIRMAN. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Ms. Williams, let me ask you this: Is it correct that you discussed with Mr. Barnett at some point prior to the 27th the fact that there were files that you wanted to get over to him?

Ms. WILLIAMS. Yes, that's correct.

Mr. BEN-VENISTE. And to put into context Mr. Chertoff's questions about the conversations on the 27th themselves, I believe you had testified that the subject came up while you were having a conversation with Mr. Barnett in the airport, either going to or coming back from Little Rock in connection with the funeral?

Ms. WILLIAMS. I remember having—I believe I had a conversation with Mr. Barnett in the airport. I think it was after the funeral where—I don't have an absolutely specific recollection at this moment, but I believe that we talked about getting the files to his office at some point.

Mr. BEN-VENISTE. That would have been on the 24th of July?

Ms. WILLIAMS. If that was Friday, yeah, the 24th.

Mr. BEN-VENISTE. Let's talk for a moment about, Mr. Barnett, the interesting subject of taping the box and transmitting it with the help of Mr. Barlow back to your law firm. Is it correct that, to your knowledge, everything that was in the box when you looked at it went over to your law firm?

Mr. BARNETT. Are you talking to me, Mr. Ben-Veniste?

Mr. BEN-VENISTE. Yes, I am.

Mr. BARNETT. I'm sorry. I put everything that I saw in the box back in the box. I taped the box and when it was delivered to my possession at the law firm, it was still taped.

Mr. BEN-VENISTE. So as far as you were concerned, despite all these electronic records or other records of who went where, at what time, you went over there to get a box, you saw the box, you looked in the box, you taped the box up, and you transmitted it back to your law firm?

Mr. BARNETT. That is correct.

Mr. BEN-VENISTE. Now, is it also correct, to your knowledge, because I know—let's clear this up—at some point, you determined that you would not continue on or could not continue on in the representation for personal reasons; is that correct?

Mr. BARNETT. That is correct.

Mr. BEN-VENISTE. And Mr. Kendall took over?

Mr. BARNETT. Yes, I should explain lest it sound like something nefarious. My wife was assigned to a position where she would be covering the White House, and I wished to avoid any appearance of conflict. Let me stress that there would have been no conflict. I do not discuss client matters with her, and she sure doesn't check her stories with me, but we did not want any appearance and, therefore, we thought it best that although my law firm would con-

tinue the representation, I would not personally do so as to these matters.

Mr. BEN-VENISTE. Your wife is a network journalist?

Mr. BARNETT. That is correct, as to these matters.

Mr. BEN-VENISTE. And to avoid the appearance of any conflict or possible conflict of interest, you thought it best to step aside?

Mr. BARNETT. I thought it best not to handle these matters for the President or the First Lady because of the potential for an appearance of conflict.

Mr. BEN-VENISTE. With respect to this green file that you have mentioned, would it be fair to say that what occurred was that somebody handed you a file that was enroute to be either signed by Mr. and Mrs. Clinton or that had to do with personal estate planning matters?

Mr. BARNETT. I don't think it was estate planning matters. I believe it was an amendment to either a disclosure or a blind trust or both. It was that form, but otherwise, your question is accurate.

Mr. BEN-VENISTE. And nothing inappropriate with your taking charge of that matter at the point that you received the material?

Mr. BARNETT. Inappropriate? Tell me more.

Mr. BEN-VENISTE. Was there anything inappropriate, in your view, with your taking charge of that?

Mr. BARNETT. No, I thought that it was within the jurisdiction that I was assuming and indeed, back at my office, I placed that green file in the box, so it could continue in a safekeeping mode.

Mr. BEN-VENISTE. And of course, this Committee, Mr. Chertoff and I have reviewed that file?

Mr. BARNETT. You have reviewed, my understanding is from Mr. Kendall, that file and all the files in the box as appropriate despite——

Mr. BEN-VENISTE. There's nothing nefarious, no smoking gun in that file, we reviewed it?

Mr. BARNETT. In the green file?

Mr. BEN-VENISTE. Yes.

Mr. BARNETT. Hardly. If it had been, I dare say you would have pointed it out.

Mr. BEN-VENISTE. In connection with the other materials that were transmitted by you, taped up, sent over to your law firm, this Committee, indeed, Mr. Chertoff and I have had the opportunity to review those materials.

Mr. BARNETT. That is my understanding.

Mr. BEN-VENISTE. Now, Ms. Blair, no one has sought to ask you any questions. You have been requested to come here. I don't know whether anyone communicated that fact to you, but the request has gone over the airwaves and here you are. So let me ask you whether you have any knowledge at all of any of the things that have been discussed this morning?

SWORN TESTIMONY OF DIANE BLAIR, PROFESSOR UNIVERSITY OF ARKANSAS

Ms. BLAIR. No, sir.

Mr. BEN-VENISTE. You happened to be in Washington as a guest at the residence on the evening of the 27th; is that correct, Ms. Blair?

Ms. BLAIR. That is correct.

Mr. BEN-VENISTE. We have had no opportunity to take your deposition or do any preparation for this, and you and I have not spoken before; is that correct?

Ms. BLAIR. That is correct.

Mr. BEN-VENISTE. You were in Washington on other business?

Ms. BLAIR. Yes, sir. I had been nominated by the President for the Board of the Corporation for Public Broadcasting. As you know, it is customary to make courtesy calls on Members of the Senate Committee that will be holding the confirmation hearing. So some weeks previously, I had set up a series of appointments with those Senators who were interested in a courtesy call. I had appointments that day with Senator Stephens and with Senator Conrad Burns and I was a guest at the residence. But I had—it was pure happenstance that I happened to be in Washington.

Mr. BEN-VENISTE. What is your background?

Ms. BLAIR. I'm a teacher of political science at the University of Arkansas.

Mr. BEN-VENISTE. You're a university teacher?

Ms. BLAIR. That's right.

Mr. BEN-VENISTE. You were appointed to the Board?

Ms. BLAIR. Correct.

Mr. BEN-VENISTE. And the records diligently kept by the security people at the White House reflect that you entered the third floor where I presume you were staying in a guest room at some point after 4:00 p.m. on the 27th. Did you happen to see Mr. Barnett looking through a box of documents?

Ms. BLAIR. No, sir, I did not.

Mr. BEN-VENISTE. Or Ms. Williams talking to Mr. Barnett or any other such thing?

Ms. BLAIR. No, sir. I don't have any recollection of seeing any of these people. Certainly I saw no boxes, no documents.

Mr. BEN-VENISTE. I have no further questions. We will yield back our time, Mr. Chairman.

The CHAIRMAN. Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Ms. Williams, just to refresh, and we can go back in this deposition as far as you want, but we'll pick up on the question, "And how did you come to see Mr. Barnett?" Before that, we discussed it was Tuesday, the 27th of July. But the question we need to start with you is:

Question: And how did you come to see Mr. Barnett?

Answer: He had come to see Mrs. Clinton.

Question: About what?

Answer: I don't know.

Question: He was in the residence?

Answer: Yeah, he was in the residence.

Question: And you were called?

Answer: No, I had come up to the residence for something else.

Question: And you bumped into him?

Answer: Yeah, I saw him. And he said, you know what? It would make sense to get those documents over to the office.

The answer was, "He had come to see Mrs. Clinton." That was your direct statement. Now, Ms. Williams, the real question is this. The White House says, according to The Washington Post and others, that Mrs. Clinton did not see Mr. Barnett, never examined the contents of the documents and Mr. Barnett said he was at the White House specifically to meet with you. What I would like to know, if it would be possible to get it in these hearings, is who is telling the truth, you or Mrs. Clinton? Who was in the White House residence that day to meet Mr. Barnett? Was it you or was it Mrs. Clinton? Would you just give me a yes or no, just a brief answer?

Ms. WILLIAMS. Mr. Chairman, I believe I can give my answer in whatever way I want to or do I just have to say yes or no?

The CHAIRMAN. No, no.

Senator FAIRCLOTH. Go ahead and answer.

The CHAIRMAN. You can answer, go ahead.

Ms. WILLIAMS. Thank you. First of all, as I said, it is my recollection, because I had come to the residence 20 minutes after Mr. Barnett was there, that I saw—it is my recollection that I saw Mrs. Clinton chatting with Mr. Barnett. That's my recollection.

Senator FAIRCLOTH. She says that she did not see him, but you say she did.

Ms. WILLIAMS. Well, it was 2 years ago. I am in and out of that residence nearly every day for something or the other. Sometimes I see Mrs. Clinton. Sometimes I do not. So it is a case of our recollections.

Senator FAIRCLOTH. The White House says that Mrs. Clinton did not review the contents of the documents. Mr. Barnett says that only two of you reviewed the documents. According to your story, you, Hillary Clinton, and Bob Barnett were all there waiting for the courier to arrive and get the documents. This would sort of suggest that all three of you did review again—if you were in a room with Bob Barnett, Hillary Clinton, and yourself and you're telling me you can't remember that?

Ms. WILLIAMS. Senator Faircloth, with all due respect, let me remind you that I'm Mrs. Clinton's Chief of Staff. I probably see her more hours of the day than any other person besides the President, her husband, and Chelsea, their daughter. I see her constantly. So while I do understand that for many Americans, the idea that seeing Mrs. Clinton would be an extraordinary experience, for me, it was a part of my job and I do not remember every single time I have seen her.

Senator FAIRCLOTH. How about Mr. Barnett, is seeing him a regular part of your job?

Ms. WILLIAMS. I have seen Mr. Barnett on a number of occasions. Mr. Barnett and I are friends. We are social friends. We see each other at dinner. We see each other at lunch. I see Mr. Barnett quite a bit.

Senator FAIRCLOTH. Ms. Williams, according to your story on this Tuesday, July 27, it took a courier 30 minutes to get to the White House and get clearance to come up to the residence, not a place visited by many people. Yet, in your deposition, you said the reason you didn't get the documents to Mr. Barnett on Thursday, July 22,

was that it was late. By this time, I believe it was 5:50 or 6:00 p.m. and you were tired. For that reason, you put them in the residence.

Senator SARBANES. What page and date are we at?

Senator FAIRCLOTH. That would be page 97.

Senator SARBANES. What date?

Senator FAIRCLOTH. July 7.

Senator SARBANES. Thank you.

Senator FAIRCLOTH. We have records that suggest you didn't take the documents over to the second floor until 7:30 that night. In other words, you said you were too tired at 5:50 or 6:00 p.m., but you didn't take them up until 7:30 p.m. It would just seem practical if the courier could get there in 30 minutes and get the records from the second floor, they surely could have gotten the documents from your office and up in that length of time.

But my question is this: Given the above, is it still your story that it was your idea to put the documents in the residence that day because it was late, and you were tired, and it was going to take a courier a long time, or is it the truth that Mrs. Clinton desired that they be moved to the White House so she could review them before they went to Bob Barnett?

Ms. WILLIAMS. My recollection is that it was my idea to move the documents to the residence. I was tired that evening. The next day was Mr. Foster's funeral. I do not know what happened to me between the time I got documents over to the second floor. I think that many of us would agree that the best laid plans are not often the ones that are carried out. I don't know what happened. I could have been stopped in my office by something. I could have had another emergency come up. I could have been on the phone. You know, I make no apologies, but as I recall, I was very tired, and I did not want to wait, and it was because of that that I put into play moving the documents to the residence that evening.

Senator FAIRCLOTH. All right. You have also suggested that same day, because calls were made shortly before 1:00 p.m. from your house to the First Lady, that maybe you didn't come into work until later that day because your first appointment was in the afternoon, that you came in late and that's the reason you were making the calls at 1:00 p.m. from your house. Now, the next thing is there are records suggesting that you came in at 8:00 a.m. that morning. So if you came in at 1:00 p.m., why were you so tired at 5:50 p.m.? When did you come to work that day?

Ms. WILLIAMS. I don't recall what time I came to work that day. I live very close to the White House. It was 2 years ago. It's not unusual for me to go back home during the day to go pick up my cleaning, to go throw clothes in the washer, to do any number of things that I don't have a chance to do because I work very early hours and I also work very late hours.

Senator FAIRCLOTH. You made the phone calls from your home to the First Lady because you were at home?

Ms. WILLIAMS. Uh-huh.

Senator FAIRCLOTH. If that was the case, you couldn't have been too tired later that afternoon because then you didn't get back to work until after 1:00 p.m. And so you purposely took the documents to the residence, not because you were too tired to wait for a courier.

Mr. Barnett.

Mr. BARNETT. Yes, Senator.

Senator FAIRCLOTH. Mr. David Kendall's letter to the Committee states that the first time you discussed these files with Mrs. Clinton was on August 6?

Mr. BARNETT. Correct.

Senator FAIRCLOTH. What happened on this day to make your recollection so precise that it was the nature of your discussion with Mrs. Clinton, and what was the nature of your discussion with Mrs. Clinton?

Mr. BARNETT. Before I answer that, may I correct three errors in one of the questions that you proposed to Ms. Williams, please?

Senator FAIRCLOTH. Yes.

Mr. BARNETT. I see that we sometimes have to——

The CHAIRMAN. Mr. Barnett, you can answer the question.

Mr. BARNETT. Thank you, Senator.

In your first question, Senator, to Ms. Williams, you read a portion of a quotation that I think you said was from The Washington Post in turn quoting Mr. Kendall's letter. Please note that the full letter, in fairness, does say and my testimony was earlier in answer to Mr. Chertoff, he cannot rule out that possibility. It is my best recollection that I did not see Mrs. Clinton on that day, but I cannot 2½ years later rule out that possibility. So I want to repeat that.

Second, there was some suggestion—and I think this was probably unintentional, but I think the record has to be clear. There was some suggestion, maybe it was inadvertent, that Mrs. Clinton was somehow there at the time I was undergoing these events that Mr. Chertoff asked me about, looking at the box and all. She was not there. I want that to be very clear.

Third, there seemed to be some suggestion—and again it may have been inadvertent—that Ms. Williams was doing the review or participating in the review of those files, as brief as it was. I want to again make the record clear it was my review. So please allow me to make those corrections.

Now, let me answer your question if you would like me to.

Senator FAIRCLOTH. Go ahead and answer the question. How do you know it was August 6? What happened?

Mr. BARNETT. Let me drop back and explain. I took over these matters following the death of Mr. Foster and the funeral of Mr. Foster. I was being asked as an attorney who takes his responsibilities very seriously to undertake matters for some individuals who were current clients of mine, friends of mine, and who also happened to be the President of the United States and the First Lady. I took that very seriously.

So upon getting back to my office, I reviewed those files, page by page, read every file, indexed every page, and kept them in a completely secure environment throughout the whole time. I also listed off for myself not only the matters that were reflected in the files, but also matters that I either was doing at that time or I knew might need to be done, and I had a meeting with Mrs. Clinton on August 6 to review what I'll call all pending matters. I know that took place that day because it's on my calendar.

Senator FAIRCLOTH. It was on your calendar. OK. Mr. Chairman, this is the third time that we have had Ms. Williams before us. And each time, it has been my view that she has not told us the truth or her memory has been selectively weak. Now, she's the Chief of Staff to the First Lady and Assistant to the President. I simply don't think that anyone that holds these positions should come before a Senate Committee and, in my opinion, lie to us and simply go on as if nothing had happened. I personally think that Ms. Williams should resign from the White House and it is somewhat of an effrontery to the Committee that she does not.

Mr. Altman and Ms. Hanson resigned for misleading this Committee, and I think Ms. Williams should do the same thing. I still bring back—we keep crossing back what Ms. Williams said and what Mrs. Clinton said in the telephone calls from the plane and everywhere. I think when we get to the bottom of this, and we will get that when Mrs. Clinton appears before us.

The CHAIRMAN. Senator, thank you.

Senator Dodd.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Mr. Chairman, just on that point, first of all, with all due respect to my colleague from North Carolina, we're talking about events here that go back several years. I've made this point earlier to my colleagues, and I think many of them agree and accept this, to expect the kind of detailed recall—I think Ms. Williams made the point, and I think all of us can appreciate this, that she is not a tourist at the White House. She is the closest person that works with the First Lady and sees her all the time. And to expect anyone to go back that amount of time, knowing full well that each and everyone of us here on this Committee, having been asked in the past by others to describe where we were even a week or two or three ago and whom we met and exactly what we said, I think can appreciate how difficult that can be.

Now, it's one thing to disagree with what Ms. Williams has said, but to call her a liar I think is wrong. That's just wrong. We shouldn't be engaging in that. She has given her testimony. She was a sworn witness. She has given us her best recollection. Members certainly have the right to disagree with her recollection but to call people a liar I don't think really helps in the conduct of the Committee's business.

Ms. WILLIAMS. Senator Dodd—

Senator DODD. It just seems to me, Mr. Chairman, I hope we kind of stay away from that. We've been trying to do that here, and calling for people's resignations is a good way of getting a headline, but this Committee has serious work to do. We've asked these people to come before us. Ms. Williams has testified on three occasions now going back over this ground and again, I don't know of a single Member of Congress who could recall with any clarity events that go back even weeks ago, let alone years ago, and so I would hope that we could stay away from that kind of personal invective. It doesn't serve us well as a Committee.

Ms. WILLIAMS. Senator Dodd, I appreciate you saying that. Senator Faircloth, Chairman D'Amato, this Committee, I serve at the pleasure of the President. I do not intend to resign until I am ready

to resign. And so further discussion of this really, in my opinion, serves no real purpose.

Senator FAIRCLOTH. Mr. Chairman.

The CHAIRMAN. Senator.

Senator FAIRCLOTH. We have sat here and we have listened to this vague——

The CHAIRMAN. Let me say this, Senator. This is Senator Sarbanes' time and I will give you an opportunity when we come back unless the Senator wants to yield and certainly we'll hold and credit his time, take the clock off, if you do.

Senator FAIRCLOTH. I just wanted to reply to Senator Dodd very briefly.

Senator SARBANES. Certainly.

This won't be off our time?

The CHAIRMAN. No.

Senator FAIRCLOTH. We have sat here for three sessions with Ms. Williams and listened to this convoluted, inaccurate, floating testimony. Now, Ms. Williams, as we have said, is an Assistant to the President. She's Administrative Assistant to the First Lady——

Ms. WILLIAMS. I'm Chief of Staff to the First Lady.

Senator FAIRCLOTH. Chief of Staff, whatever. But it is time that a person holding that position should give direct, clean, and clear testimony to this Committee and not this drifting, floating, convoluted stuff that we've been putting up with for three sessions. And if that doesn't lead you to the conclusions that I have drawn about Ms. Williams' testimony, I don't know what it would take to lead you to that conclusion.

Senator DODD. I can just say to my colleague, I think my colleague drew his conclusions before this Committee hearing even got underway, with all due respect. Members do that. That's their right to do that. I don't challenge that, but my colleague from North Carolina from the very beginning has held a point of view about all of this. That's his right to do that. But I don't think attacking witnesses, labeling them liars and so forth really is what we ought to be about here.

We have a job to try and find out what happened. The Congress has asked us to do it, an overwhelming vote by our Members and we ought to go about the business of doing that and our witnesses, I think, have done the best they can. Again, my colleagues, some of whom here will believe they haven't done the best they can and I presume those views will be reflected in a Committee Report along the way but I don't think we do ourselves, or this institution, or this process any good by maligning witnesses. We can disagree with them, draw whatever conclusions we may, but I would just repeat what I said a moment ago, I would hope that we stay away from that kind of talk. It doesn't do ourselves, the institution, this Committee any good at all, in my view, and certainly it's not going to be unique for Members to draw conclusions before a Committee hearing begins about what they want to get out of it and certainly our colleague from North Carolina won't be the first person to do that nor is he the only person on that side of the aisle ever to have done it. I've seen it over the years.

But my hope would be that we bring our witnesses in, ask them the questions. They're sworn witnesses. They know full well when

they're testifying, having raised their right hand, that they have an obligation to fulfill here. But again, I don't think it's extraordinary at all for someone to not recall in vivid detail events that transpired several years ago in the midst of a very emotional event, a person who was very close to many of the people who have been before us who took his own life and events immediately surrounding that particular event, it seems to me it would—a normal person, I think, would anticipate the reactions we've heard here, not to recall with the kind of detail that I've suggested because of the emotional content of such an event.

Mr. Chairman, I want to make the case here, I would hope we can stay away from that kind of language, ask the questions and move along here. And I'll yield back my time to Senator Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Mr. Chairman, I have mentioned this before. One of the things that has changed in this body in my 21 years here is we have become excessively partisan, and we're going out after every little minute point that someone on the other side has made. I frankly feel uneasy with some of the Newt Gingrich attacks on the other side of this body. Do I differ with Newt Gingrich on a lot of things? Absolutely. But we have to use some civility around here. Ms. Williams, you testified, I asked you the question how much you had in legal fees the first time you testified. This is the third time, and at that point you said \$141,000. I don't know where she gets that kind of money. And that she should be criticized for inconsistency, I say to my friend from North Carolina about something that happened 2½ years ago. If you start questioning me about what happened 3 weeks ago, where I was for dinner 3 weeks ago, I don't have the foggiest idea where I was for dinner 3 weeks ago, what time it started and so forth.

So far, this Committee—and I don't mean this disrespectfully to you, Mr. Chairman—has dug more dry holes than a bankrupt oil company. And we keep going until finally we're going to find someone who somewhere violated some technicality in the law. We ought to stop this on both sides of the aisle. Our business is law-making for the country, determining national policy.

My staff just handed me a copy of Newsweek where there's a story about Ms. Williams' alleged evasions and inconsistencies. Of course, there are inconsistencies. Of course, she can't remember everything. And then it quotes a staff member, "We're going to crush her," says one Committee staffer." We have more important business than crushing a White House staff member around here. And it doesn't reflect favorably on us when we do that kind of thing. I hope, whatever we're going to do in this Committee, I hope we get on with it, get it over with, and then start talking about what we do in this Nation that we ought to be spending our time on.

Again, I don't mean that disrespectfully to you, Mr. Chairman, or my colleague from North Carolina, but I feel very uneasy about what we're doing here.

Thank you.

The CHAIRMAN. Senator, I'm only going to take this opportunity to say that I feel very uncomfortable at times, and that is not due to the fact of any animus that I have. Indeed, I have great sym-

pathy for many of the people who are called before this Committee; personally, great sympathy.

But I have to make this observation that I do believe that there has been, and if one looks at the record carefully, one can detect a clear pattern of faulty recollection that goes beyond that which the Senator has quite properly alluded to, that which no ordinary person could be expected to recall 2 nights ago, last week, where did you have dinner, who did you have it with. I mean, it's ridiculous.

It's just—but I tell you that when we look carefully as it relates to activities, conscious activities, et cetera, when people are given the opportunity to refresh their recollection or memorandums—I mean, when a person has a memorandum and can't recall the events and there's testimony from other people that comports with the memorandum that that person took himself—the diary or notes that he took and a feigning, I would have to suggest at that point it is disingenuous and not correct to come up with a conclusion that this is a deliberate kind of situation. You see, there has been a pattern.

Do I have empathy for the individuals themselves? Yes, I do. Do I expect them to have total recall on all events? No, I don't. But it is that which has created a feeling among many on the Committee that the witnesses or a number of them have not been forthcoming, particularly, when you measure that against—and I've had them turn off the clock because I know you still have some time—particularly, when you measure it against a very clear testimony by the Justice Department people.

I'll give you an example and then stack it up against some of the others who have no recall, who don't recall at all the events that they are quoted as having done or undertaken, significant events, significant. For somebody to suggest, for example, that they did not—or they do not recall something so important as saying there are pieces of paper in a brief bag and the brief bag belonging to Vincent Foster and a young attorney there, an attorney for Mr. Foster, recalls vividly and you bolster that with testimony from the secretaries, and then you look at the fact that when the Chief Counsel found that out, he grilled her.

It doesn't square up and I would have to tell you I would ask any member of that panel if they would not have looked into that brief bag after that had been brought to their attention, and that's why I have to tell you, when I hear some of this testimony given where there is corroboration given, and not an incidental issue. Let me tell you whether or not Maggie Williams saw Mr. Barnett at a particular time and particular place, we understand that you can't have total recall on this thing, but there are other episodes, et cetera, that this Senator has a difficult time in accepting in terms of saying I don't recall, I don't recall.

See, if it was once or incidental, I would subscribe to my friends' conclusions and say come on, again, no one could be held to those kinds of standards, but it's the pattern that I suggest that bothers and troubles some of us.

Senator SIMON. Would my colleague yield for a question?

The CHAIRMAN. Certainly.

Senator SIMON. Do you think it's proper for a staff member to say, if that staff member is quoted accurately by Newsweek, "We're going to crush her."?

Senator FAIRCLOTH. No, we don't.

Senator MACK. Nobody does.

The CHAIRMAN. No, I don't think that's proper. That anyone is going to say they're going to crush anybody. I know it's horrible, it's wrong. There was a staffer who engaged in that and made that kind of thing and I would think anyone in the media should be careful about the kinds of conclusions, particularly if a person isn't willing to loan his or her name to an article and wants anonymity, the media should reject it. They should be very skeptical about any conclusions that comes from a staffer on any side where they want to hide behind the anonymity which is generally granted to them at their request, so I concur with my friend and colleague.

Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. I have a couple of observations. First of all, the meeting that's been asked about here, the date was July 27, 1993; the testimony and depositions that Ms. Williams was being put through, the first was taken on July 7, 1995, almost 2 years, just shy of 3 weeks, from when the event about which they're being asked.

Now, you know, I invite anyone to search their own mind as to how accurately they could remember going back over that period of time. Mr. Barnett himself here today has said, well, to the best of his recollection, this is what occurred, but he cannot preclude some other possibility. I mean, I think that's a straightforward answer. I don't know what Members meant. Do you want him to recollect something he can't really recollect?

On the other hand, his recollection is not so clear that he can altogether preclude things from it and I'm reminded about what Senator Dodd said at one of these hearings. If the witness says he can't recollect, then the witness is dissembling and being disingenuous—I think this is the way you put it.

If two witnesses have differing recollections, then one must be lying and if two witnesses have the same recollection, then there's a plot to tell the same story. And that seems to be the framework in which these responses are received, so I think we have to be very careful in terms of casting aspersions. We can work through these things, and we will have to evaluate the testimony as it's given to us by the witnesses. I see our time has expired.

The CHAIRMAN. OK. Before I turn to Senator Mack, I would say that—and I will ask Mr. Chertoff to make—this is the first time I have seen this letter from David Kendall to Jerry C. Jones, Esquire, Rose Law Firm. "It was good to talk to you today. I am enclosing herewith three file folders, labeled:"—

Senator DODD. Can we have a copy—I'm sorry, we have one.

The CHAIRMAN. —"A3530.1 Madison Guaranty Limited Partnership Application/Brokerage Activities, A3530.2 Madison Guaranty—Net Worth—(1985) Preferred Stock Offering, and A3530.3 Madison Guaranty Preferred Stock Offerings (Corporate), which

were among the late Vincent Foster's files. They appear to me to be files of Rose Law Firm documents."

I have to underscore something and if I'm wrong, I'm going to ask Mr. Chertoff to speak to it or amplify on it. These files directly go to the question and issue as it relates to criminal referrals or a criminal referral as it related to Madison Guaranty and obviously, the question occurs given now that we have learned that there was a gathering of information purportedly so that press inquiries could be answered as it related to the criminal referral.

What were they doing with Mr. Foster, and how is it that they came into the possession of Williams & Connolly? If they were not in the box, Mr. Barnett—and you indicated that they were not—is that true?

Mr. BARNETT. That is correct.

The CHAIRMAN. Then how did they get there? Were they removed from Mr. Foster's office? That's the question we have to ask. I'm not asking you. You told me they weren't in the box. I accept your explanation. Did they float there? Who gave them to Mr. Kendall? How did they get there? Do you understand why we begin to talk about whether or not files were removed, whether all the files were turned over to you, whether or not when we hear from a White House aide who says I was told by Ms. Williams that the First Lady wanted to review these? You think he made that up? Are we supposed to reject his direct testimony when he recalls that that's what he was told?

How did these files get there? That's a legitimate question by this Committee and it goes right to the issue as it relates to the concern that obviously Susan Thomases explained to Mr. Nussbaum and that's why that investigation was changed. And it would appear reasonable people can conclude so that the Justice Department did not go through, and did not index, and did not see all of those files.

Now, that's why people are concerned. It's not some kind of—and this is the first time I've seen this today. I ask counsel, when did you know about this? And he said to me what, last week sometime?

Mr. CHERTOFF. Yes, Mr. Chairman. This was supplied to us in the Rose Law Firm production and I guess the one observation I would make, and I think in fairness to you, Mr. Barnett, so you understand why this is important, people ask the question, well, what was there in Vincent Foster's files that one would have wanted to conceal from, let's say, Mr. Margolis? Mr. Margolis is going to come in. He's going to look at the files here. He thinks he has an agreement to look at the files. It's then reversed the next morning by Mr. Nussbaum after the sequence of phone calls. So naturally, you wonder what could be in Vincent Foster's files that might be a problem.

We've talked about the notes, about the tax problem. I know you worked on that. There's the Travelgate notebook, now here is, in Vincent Foster's files evidently based on the letter, three files that indicate a substantial amount of work done by the Rose Law Firm and we know from the bills that Mrs. Clinton was involved in this. At least she appears on all the bills relating to a bank which Mr. Margolis knew was the subject of a criminal referral, because not

2 months before, Mr. Margolis had actually been briefed on the original Madison referral.

Now, Mr. Margolis, when he came up here last summer did not know, as I did not know, and as far as I know anyone else here knew, that Vincent Foster had in his files something relating to Madison Guaranty and that the Rose Law Firm had done work on Madison Guaranty. But knowing David Margolis, I have to believe if he had gone through the files even as he intended to do in the original agreement, looking at the file folders and he was trying to figure out why would Vincent Foster have taken his own life and he had seen Madison Guaranty and then he would have said to himself, my God, 6 weeks ago I saw a criminal referral which I was briefed on relating to Madison Guaranty in which the President is mentioned as a witness, that might have rung a few bells.

So that naturally causes us to ask the question since on the face of the letter these are Vincent Foster files——

The CHAIRMAN. By the way, I believe what you said, Mr. Barnett. I know that you did not put those files in that box.

Mr. BARNETT. I appreciate that, Mr. Chairman. May I respond to Mr. Chertoff, because he's made a statement——

The CHAIRMAN. Let him finish. Then he will give you every opportunity.

Mr. BARNETT. I appreciate you stating that because I want that to be very clear.

The CHAIRMAN. No, for the record because Senator Dodd is absolutely right. We have to be careful about what activity we may or—may be attributed to a witness who I have no doubt as a distinguished member of the Bar, conscientious, when you said to this Committee that these are the files that I catalogued and that were put in and I, thereafter, catalogued, et cetera, I have no doubt about that, but that then raises this point.

Mr. BARNETT. May I respond because you have said something pretty important?

The CHAIRMAN. Let him finish and then you can respond, have all the time you want.

Mr. CHERTOFF. I want to echo with the Chairman because I know you have a fine reputation. We have even dealt briefly with each other in a past life.

Mr. BARNETT. Yes, we did.

Mr. CHERTOFF. And both you and all your partners have a superb reputation.

Mr. BARNETT. Thank you.

Mr. CHERTOFF. It's quite important when you get the box, it's open, and you accounted for what happens with the content of the box from that moment on, you look at it, you seal it up, and it's returned to your office in a sealed condition and you inventory it there.

The problem we have is it leaves at 7:30 at night on July 22, 4 hours after Ms. Williams and Mr. Nussbaum sit down to do their own review of the documents in Mr. Foster's office. Four hours later, it winds up going up to the residence with Mr. Castleton, whom Ms. Williams has described over the summer being an intern who she wouldn't talk to, but Mr. Castleton swears under oath that he was told by Ms. Williams that the First Lady wants to review

the documents. They then sit in the closet until Tuesday when you finally come aboard to pick up the documents and you retrieve them open. So there's an unaccounted for period of time here and these files are the kinds of things that cause people to ask people what happened in that unaccounted for period.

I'm sorry. I know you wanted to respond.

Mr. BARNETT. I appreciate it. May I say, first of all, I appreciate from both the Chairman and you, Mr. Chertoff, your kind words. I'm grateful. Let me say something about perceptions first. A lot of people who watch these hearings follow very closely who called who and which document was there. But there's also a segment who probably thinks that you think I killed Vince Foster. There's probably a segment who thinks you think I am Vince Foster and there's probably a segment who thinks I'm Senator Alfonse D'Amato because perceptions get all messed up in these things.

Senator MACK. I don't think people can go quite that far.

Mr. BARNETT. So I appreciate you clearing that up because I take this very seriously. Three points. First, I can't offer any further information about the letter that the Senator mentioned. I was not involved at the time. Second, I cannot offer any further information about what happened before I got the documents, but may I say for the record, under oath, neither the President nor the First Lady nor Margaret Williams nor Susan Thomases nor Socks the cat instructed me to do anything improper with those documents, and if they had, they would have received a response from me that neither they nor I would have forgotten. That's not how I practice law, and that's not how I live my life.

Let me be clear. Nothing improper was requested and nothing improper was done as it relates to this lawyer. I want to be very clear on that.

The CHAIRMAN. Mr. Barnett, I appreciate your setting the record straight in that way, and I think it's important to note that at no time has this Committee, certainly not intentionally, ever intended to convey that you were asked to do anything improper.

Mr. BARNETT. Thank you.

The CHAIRMAN. As a matter of fact, we have gone out of our way to—

Mr. BARNETT. Yes, you have.

The CHAIRMAN. —suggest that there was a doubt as to your testimony. There are conflicting areas. There are some very troublesome ones, which we have outlined to you and if you were here and if you were counsel to either side, it would be troubling to you. And it is very troubling to the Senator as it related to the methodology of that investigation. You weren't involved in that?

Mr. BARNETT. Yes. Senator—

The CHAIRMAN. As to how those documents were handled. It was very troubling to the Deputy Attorney General Mr. Heymann, it was very troubling to Mr. Margolis. It was very troubling to the Justice Department professional staff, very troubling, and they warned and indicated that this would create trouble.

And indeed, we now find out that somehow documents that should have been in that box and you have testified that they weren't, and I believe you. How did those documents get to Williams & Connolly, and how did those documents—and again, here

it says, "I am enclosing herewith the file folders, labeled," and it goes through the Madison things which were among the late Vincent Foster's files.

That's a very troubling problem, given all of the circumstances how the Justice Department was effectively precluded from undertaking its review of the files in Vince Foster's possession. That is a smoking gun. That does lead many to say that look, we haven't been leveled with. There were files that were removed, and we know that people who were in that office who were not Justice Department, people who had access repeatedly, who were in that office, who were in that office after there was requests made to seal the office.

If you look at the very start of the investigation to what we have now and we find this series of events, how did the files get out of the office? So we're very concerned, very troubled by that. I just make that comment. It does not reflect upon you, and indeed, it would seem to me that you would want to use the best and the brightest and the people of the greatest integrity and give them the files at a certain point after those files had been cleansed, looked at, reviewed, so that they would have the benefit of your reputation. Indeed, you could say, just as you did, if anybody suggested anything tawdry, wrong, out of line, I would have told them where to go and I believe that.

Mr. BARNETT. Mr. Chairman, thank you for those words. May I make a brief context point because I think sometimes it gets lost.

The CHAIRMAN. A lot of things get lost.

Mr. BARNETT. They do. If you bear with me, I promise to be brief.

The CHAIRMAN. No, go ahead.

Mr. BARNETT. I don't think it's unimportant. On July 20, 1993, a lot of us lost a good friend. Vincent Foster was a man I respected, worked with, admired, saw socially. I was not as close to him as many of the people who have come before your Committee, but I took that loss very hard. All of us did. We were worried about what happened. We were worried about his wife, a dear person. We were worried about his children, and we were worried about each other. So maybe some of the people who come before you who talk about some of the things that happened following Vince's sad and untimely death were operating at that time in an atmosphere of grief.

I don't know if you or Mr. Chertoff or others here have had the sad experience of losing a dear friend or family member. I hope you never have. I hope you never will, but this was a terrible tragedy, and it probably meant that things were done under the auspices of sadness and grief that, as we look back 2½ years now, it's hard to reconstruct.

I must say, and I hope she doesn't fault me for this, but on the plane going to the funeral—the President invited me to come on the plane to go to the funeral—I tried to talk to Maggie Williams. Maggie Williams was crying the entire flight. I could not talk to her. She was desperately, desperately hurt by this, as much as anyone, more than most.

And so I have great understanding why she wouldn't 2½ years later remember every little thing, and I think you do too, Mr. Chairman, but I want to put this in context. I want us all to re-

member that we were operating in the context of a real tragedy, and I think everyone up there would admit that.

Thank you for your indulgence.

The CHAIRMAN. Thank you, Mr. Barnett.

Senator Mack.

OPENING COMMENTS OF SENATOR CONNIE MACK

Senator MACK. Thank you, Mr. Chairman.

I think the place where I will start is responding to some strong feelings that were expressed in different ways here this morning. As opposed to using my words or Senator Faircloth's words or Senator Dodd's words or Senator Simon's words, the reason that there is such frustration is because there are a series of inconsistencies in the testimony, and I guess, again not being an attorney, I don't have to deal with these kind of clashes all the time—so I'm observing as we go through this process—but there are what some would refer to as being impartial observers to this.

I must admit up front that I don't usually quote the New York Times or The Washington Post, but the New York Times in their editorial, I believe on December 6, "The hearings have also"—and again I'm quoting from it, "The hearings have also reaffirmed that Hillary Rodham Clinton's associates seem incapable of producing candid answers to the questions following the Foster suicide and the handling of the Whitewater documents in his office." Again, that's not me saying that. The White House—excuse me, The Washington Post has an editorial, I think the following day, "Discrepancies in the individual recollections of Mrs. Clinton's close friend Susan Thomases; the First Lady's Chief of Staff, Maggie Williams; and the former White House Counsel, Bernie Nussbaum have only added to the growing confusion. The impression has been left, rightly or wrongly, that the Clinton White House is hiding something." I guess that's what keeps driving us to keep pursuing these questions.

One of the new bits of information that we got actually ended up bringing you here today, Mr. Barnett. I'm sure you wish you were not here, but the fact is you are. And it has to do with, at least, what appear to be discrepancies about why you came to the White House or actually who asked you to come to the White House and what connection Maggie Williams may have had with that.

Now, if you take that incident by itself, someone might say well, you know, you guys are really nitpicking up there. But what's happened is that over a series of both depositions and testimony before the Committee, we find conflicting information with respect to the handling of the documents.

I must say to my friend, Senator Dodd, that I am drawing on an impression here. I get the feeling that Ms. Williams, from the beginning of this, has tried to send the message that I really don't have anything to do with those files, that was somebody else's—I mean, I'm not involved in that.

But then we have these kind of—Sergeant O'Neill testifies that he saw her leave Vince Foster's office with files in her hand. There is discrepancy between Bernie Nussbaum's testimony and Maggie Williams' testimony with respect to her involvement in the office prior to these files being taken to the residence. Tom Castleton,

who by the way I understand is a Harvard graduate and is on the staff of the White House, not some flunky that might be easy to brush off——

Ms. WILLIAMS. Excuse me. I'm a graduate of Trinity College, and I'm also a graduate of the Annenberg School at the University of Pennsylvania, since we're doing school checks.

Senator MACK. Very good, thank you.

Mr. Tom Castleton, as I indicated a minute ago, said that Maggie Williams basically said to him that the reason these files are going to the White House is for the review of the Clintons; again, conflicting testimony. And now we have this situation today where we have this difference with respect to your involvement, so it would be helpful to me if you could—again, the impression is created that it was just kind of by accident that Ms. Williams bumped into you at the White House residence.

Now, I would like to hear from you and——

Mr. BARNETT. Sure, I appreciate that. I think, in good faith, you are giving me a chance to answer the discrepancy, and I would be pleased to.

Let me say first that the quotes you read were not addressing me. I want that record to be clear. Second, with respect——

Senator MACK. I think that goes without saying but I appreciate that.

Mr. BARNETT. Thank you.

With respect to the discrepancies, quote unquote, I cannot rule out, I said that I think three times, the possibility that I saw Mrs. Clinton that day. It is not my recollection, as we sit here today, that I saw her that day. Let me tell you why I think that——

Senator MACK. I am not really so much interested in that one as to what kind of initiated your being there, who you were waiting to see, why you think that you were there that day——

Mr. BARNETT. Yes, and I have testified to that.

Senator MACK. I know, but——

Mr. BARNETT. I have testified to that completely.

Senator SARBANES. Senator Mack said there was a discrepancy about why you went to the White House.

Senator MACK. Senator Sarbanes, I wonder if I could just continue with my questions.

The CHAIRMAN. Senator Mack.

Mr. BARNETT. Let me answer if I may. I would be happy to go over what I said before, believe me. I think you were out of the room at the time, and I would be happy to go over that——

Senator MACK. No, I was here.

Mr. BARNETT. Let me address what seems to be the thrust of your question which is the meeting with Mrs. Clinton, that the discrepancy exists, as to whether there was one. I don't believe there was one. Let me tell you why. I think I'm a pretty careful lawyer. Number one, there is no recordation on my calendar of such a meeting, and I would record such a meeting.

Other than in the movie——

Senator MACK. I am not asking you about that. I am asking you about how you came to the White House that day, who you were waiting for in order to pick up those files.

Mr. BARNETT. Sure. I came to the White House, as I have testified to, that day to pick up these files, and I met—I waited for a while——

Senator MACK. And why did you come? Who asked you to come?

Mr. BARNETT. My best recollection is that I came, having made an appointment through Ms. Williams, to pick up the files. That's my best recollection.

Senator MACK. When you got there you had to wait, I think——

Mr. BARNETT. Had to wait for a period of time.

Senator MACK. —about 15 minutes.

Mr. BARNETT. Or more. Then we went up to the third floor.

Senator MACK. Yeah, but who were you waiting for?

Mr. BARNETT. I was waiting for Ms. Williams. Then I went up to the third floor and we carried out the responsibilities which I described earlier, which included——

Senator MACK. Was Ms. Williams with you?

Mr. BARNETT. She was with me. And we carried out—I carried out the looking at the box which I described earlier, and I would be happy to go over that again. You have to understand——

Senator MACK. That's not necessary again. What I am interested in here is really Ms. Williams' involvement from your perspective.

Mr. BARNETT. At what specific time? I would be happy to answer.

Senator MACK. The area we were just covering.

Mr. BARNETT. In the room, in the third floor room?

Senator MACK. Again, you've already stated that you believe you came there, your best recollection is that was as a result of a conversation with Ms. Williams.

Mr. BARNETT. Yes.

Senator MACK. You were waiting in the residence of the White House until Ms. Williams got there?

Mr. BARNETT. That's my recollection.

Senator MACK. The two of you then went together up to the third floor?

Mr. BARNETT. That's my recollection.

Senator MACK. Went into a room where the box of files was located?

Mr. BARNETT. In a locked closet.

Senator MACK. Ms. Williams was with you at least part of the time?

Mr. BARNETT. That is correct.

Senator MACK. OK.

Mr. BARNETT. But——

The CHAIRMAN. And didn't she even, at some point in time when you made a cursory review, you then decided to tape the box; is that correct?

Mr. BARNETT. Correct, Senator.

The CHAIRMAN. And to the best of your recollection, Ms. Williams went and got the tape, it took a little time, and brought it back because you didn't have it there, you said that with some specificity; is that true?

Mr. BARNETT. That's my recollection.

The CHAIRMAN. She brought back the tape?

Mr. BARNETT. Yes.

The CHAIRMAN. You taped the box?

Mr. BARNETT. Yes.

Senator MACK. Then the point I would like to make——

Mr. BARNETT. Let me—may I respond?

The CHAIRMAN. No, no. There is a reason for this, Mr. Barnett, and we will give you every opportunity to expand, but let the Senator continue and he will tell you the reason. Go ahead.

Senator MACK. Well, the last point that I would make is then you left, and I assume you left that box in charge of Ms. Williams?

Mr. BARNETT. That is correct.

Senator MACK. And from your testimony or from others, Ms. Williams then turned that box over to Mr. Barlow after what sounded like a pretty quick tour around the third floor of the White House. Again, my point is all through the depositions in these hearings, Ms. Williams I think has gone over and over again to make the point that she really didn't have anything to do with these files. Our conclusion, frankly, from what we have been observing—and now this is just one more disagreement or inconsistency in the testimony—is that, in fact, she's been quite active in this.

That's the only point that I am trying to make. I think that what you have had to say about what you recall, what you recollect is making the point in a whole series of inconsistencies over the last several months.

Ms. WILLIAMS. Mr. Chairman, I have a question——

The CHAIRMAN. I'll let you ask the question, but Mr. Barnett, let me further amplify, and it is this kind of inconsistency that would make Ms. Williams merely almost a casual observer or incidental facilitator that differs dramatically from what you have testified to and the manner in which she has allowed this Committee to believe that she was almost incidental to this, and that's what troubles this Committee. And to be quite candid with you, I don't really believe it calls for a response on your part, but Ms. Williams, if you want to say something, go ahead.

Ms. WILLIAMS. Yes, I just have a question. What you said was a dramatic involvement, and then earlier, Senator——

The CHAIRMAN. Very dramatic, yes, Ms. Williams. From the night of the death, yes, from your testimony that at one point—and I am paraphrasing it—the reason you went to Vince Foster's office, and I remember this, is because I looked down and I saw a light, and I was hoping somehow he would be there.

Now, look, I have to tell you, you get a phone call from the First Lady, you don't go to Vince Foster's home to comfort or anything else. You are there within a matter of minutes after hanging up in Vince Foster's office, and it would appear—any reasonable person would believe, given the conduct and given the testimony—to look through the files or to look for something in Vince Foster's office. That's my impression.

Ms. WILLIAMS. Senator——

The CHAIRMAN. I don't characterize your testimony in any way, but I have to tell you, if you think that you have convinced the Committee and maybe others that that was the reason, you just had to do something. But I can't really accept that you didn't go deliberately and set out deliberately to go to Vince Foster's office.

Ms. WILLIAMS. Senator D'Amato and this Committee, first of all, I would like to say I have not set out to convince this Committee

of anything. I have set out to give my best recollection of matters that happened over 2½ years ago. If you are not convinced, and you suggest to me that there have been deliberate things that have been done to conspire and cover up, perhaps it is not what a reasonable man would think but perhaps it is what you-all would think.

Let me say to you that I work for the President, I work for Mrs. Clinton, but before I ever came into their employ, I had standards and I had principals about truth-telling, and none of which this Committee, now or after this, is really going to change.

If you do not believe me, you do not believe me. I was there, I have tried to recall what I have tried to recall. I have come here, no one has pushed me to come here. I have tried to be helpful in every way. That is all I have to say. But my standards and my principals and my standards for truth-telling have nothing to do with the President or Mrs. Clinton or this Committee.

Senator DODD. Mr. Barnett, you wanted to respond.

Mr. BARNETT. Yes, I wanted to respond to Senator Mack because—I respect that the Chairman didn't feel that it called for a response; but I really think it did, because I think it is a bit, I am sure, unintentional, the mischaracterization of what I said.

I certainly did not say that during that period of time that I was conducting that brief review of the box—and I'll be happy to explain why I was doing that, if you would like to know—but when I was doing that, Ms. Williams was there and we may have spoken, but she took no documents.

Senator MACK. No, I understand that.

Mr. BARNETT. She changed no documents. She made no suggestion to that effect.

Senator MACK. Mr. Barnett, that was not the point I was making either.

Well, you know Mr. Chairman, I resent the fact that Ms. Williams would lean over to Mr. Barnett and say they don't care. All I am trying to do—look, I have a responsibility as a Member of the Senate to try to pursue things. If anybody thinks that it is fun to be in this role, I would tell them that they are absolutely wrong. I do not enjoy this. This is not something I came here to the Senate to do, but I feel I do have a responsibility. There have been serious questions raised. I have quoted The Washington Post and the New York Times from their perspective. All I am trying to do is my job, find out the truth. And so I do resent a statement that says they don't care.

Ms. WILLIAMS. Then why don't you let him finish talking?

The CHAIRMAN. Now, Ms. Williams, I think that Mr. Barnett does not need legal counsel from you.

Ms. WILLIAMS. I'm not being his legal counsel.

The CHAIRMAN. I think it might be the other way around. So when we address questions, if you feel that you want to give an answer, fine, but I don't think you have to advise Mr. Barnett.

And I have to tell you that among all of the witnesses—and this is my observation—in terms of matching up with what other people have indicated, what the records have indicated, and what you failed to recollect, it would seem to this Senator that you have deliberately decided not to recollect.

It is absolutely inconceivable to me that that young White House man, that aide who still works at the White House, made up the story about you telling him to carry the boxes up there and that Mrs. Clinton said that she wanted to go through the files. I then come back to the question of how did files that were in Mr. Foster's possession and labeled Vince Foster's possession, then get out of that box, if indeed all of the files that you testified that you and Mr. Nussbaum took were put into that box and carried upstairs. And that no one thereafter looked at those or took files out.

We can go through this again and again, phone calls that you make at 6:45 in the morning. You would have us believe that that was a casual phone call to the First Lady as Chief of Staff, at 6:45 a.m. in her time; and the series of calls that flow thereafter.

So we want to talk about truthfulness, don't give me a degree as to what school you went to as a pedigree for truthfulness. It doesn't ring—it doesn't ring true.

Senator Sarbanes.

Senator MACK. Mr. Chairman, I think that there were a few minutes left before we got into——

The CHAIRMAN. There were. If you want to pursue your line, 5 minutes, and then we'll go——

Senator MACK. I hope it won't take that long, but this goes to another area that Ms. Williams and I discussed back in November. It had to do with a phone call that you made in response to a page, I think, that occurred at 12:47 p.m. Your first recollection was that you weren't quite sure whether you had your page, then documents indicated that there was a call either from your residence or from your personal calling card, I think some 8 or 10 minutes later, back to the residence in Arkansas.

And as I was pursuing that question, I think it was the first time that you indicated that maybe you weren't in the White House that day until I think you mentioned there was a 1:30 p.m. meeting. It was the first appointment of the day. And it was kind of a way of saying well, I wasn't there and the reason that I made the call at home was I may not have come in until about 1:30 p.m. That was the impression I got.

Ms. WILLIAMS. No, sir. If you recall the way in which I answered the question, we were going through the calls and we were also going through the times and we were also going through the places. And because I had looked at the call sheet at the same time that I guess many of you had, I was trying to figure out where the call had been made from since it was my home.

And as I said repeatedly during that Committee hearing, "I don't know for sure, I'm just trying to figure out if this makes any sense. Seems to me I had an appointment at 1:30 p.m. I made this call from home. Maybe I was at home." Then I said, "Please do not take this as part of my testimony because I don't know. I'm just trying to figure out, like you, at what point I made this call from home, and if I did, what time did I get there."

That is the context in which I said that. So it was not an indication on my part, and in fact, in the deposition several times I was asked by Mr. Chertoff, is that your testimony and I said, no, I'm just trying to figure this out.

Senator MACK. Well, let's see, have we gotten anywhere as a result of having time to review various documents and so forth? You still have——

Ms. WILLIAMS. I can't figure it out.

Senator MACK. You started that day with a phone call to Arkansas to the Clinton residence, 7:44 a.m. Now there are documents indicating that you came to the White House at 8:01 a.m.

Ms. WILLIAMS. Could be.

Senator MACK. —which would imply, I guess, that you were at the White House for some period of time but you are still saying you may have gone home.

Ms. WILLIAMS. It's possible, yes.

Senator MACK. Would you have gone home just for that one phone call? The reason I am saying it that way is because the phone records show that you made the phone call at 7:44 a.m. and there was another phone call at 12:57 p.m. or something like that.

Ms. WILLIAMS. No, I would—if I was at work I would have made the call at work. If I was at home and made a call I would have made it at home. I would not have gone home to have made it.

Senator MACK. But you just don't recall that at all?

Ms. WILLIAMS. Two years from now what I did about a phone call on a matter that I did not perceive as necessarily significant, I don't recall it.

Senator MACK. Mr. Chairman, I think everybody understands the difficulty of trying to recall things over a long period of time, but I think everybody also needs to understand the amount of time that witnesses, and I assume their legal counsel since they are being compensated for it, spend a tremendous amount of time going over data, material, and background information to try to bring memories to focus.

So while I can understand, and I suspect everybody listening to this knows you cannot recall every detail of something that happened 2 years or 2½ years ago, the reality is there is plenty of information to help people recall the events that took place.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Barnett, I was struck by when you were being questioned about these files by Chairman D'Amato and Mr. Chertoff, you said, well, you didn't know where they came from, and then you said, well, maybe they came from Webb Hubbell——

Mr. BARNETT. No, no, different point, Senator. No, we're talking about different things there. Should I clarify?

Senator SARBANES. I am talking about the Kendall letter, about the three files that he was returning to the Rose Law Firm.

Mr. BARNETT. Yes, correct. That is my testimony, but the other statement that you repeated back was relating to the files in the box.

Senator SARBANES. No, no, not the files in the box. I am talking about these three files that have been focused on in this letter.

Now, that struck a memory, and we went back. Hubbell in his deposition told us that they had, during the campaign, files had been assembled to respond to campaign questions. Those are the so-called Betsey Wright files, and they were then delivered to Hub-

bell. He brought them to Washington and had them in his basement. And then he delivered them to Mr. Kendall.

In fact he was asked:

Question: You testified that at some point the files were moved from your home in Little Rock to Mr. Kendall's office here in Washington?

Answer: They first went to my home here in Washington.

Question: OK.

Answer: And then they went to Mr. Kendall and Mr. Kendall picked them up.

So they were transmitted over to Mr. Kendall. These are the files that had been accumulated during the campaign.

Now, Mr. Chairman, you alluded earlier to the fact that Mr. Kendall is here sitting behind Mr. Barnett——

The CHAIRMAN. If you think I am going to get into the question of lawyer confidentiality and privilege without—after we already have this going, without sitting down with both counsels to review what we might or might not—even Alfonse will not tread——

Senator SARBANES. I don't see an attorney-client privilege involved here. And since Mr. Kendall is here, maybe he can give us a quick answer to the question that's been raised.

The CHAIRMAN. If you have no objection and if Mr. Kendall has no objection at this point in time, I have not reviewed or looked at that, I don't see a problem and he is standing.

Mr. Kendall, do you want to try to answer that if you can.

Mr. KENDALL. Mr. Chairman, I would.

Thank you, Mr. Chairman, Senator Sarbanes.

I don't think there is any mystery here and I don't think there is anything that gets us into any matters of attorney-client privilege. I did receive files from Mr. Hubbell in November 1993. I was attempting to collect relevant documents from a great variety of sources. I got files from Mr. Hubbell.

The three files in question here have been produced some time ago to the Committee. The Committee has had an opportunity to review them, because, Senator, I kept copies of the files that I sent back to the Rose Law Firm.

The reason I sent them back to the Rose Law Firm was it appeared to me, and Mr. Hubbell confirmed, that they were original Rose Law Firm files. So I thought the proper home for them was back at the Rose Law Firm. I believe my cover letter refers to them, retaining and securing them. It's been a long time since I've seen the letter. Before I sent them back to the Rose Law Firm I indexed them, made a careful copy for my own files, and then I sent them back to the managing partner.

Now, everything I know about those three files really came from Mr. Hubbell, and it was my understanding that Mr. Foster had, I think during the campaign, taken custody of those Rose Law Firm files in order to answer questions which might have arisen during the campaign. But when they came to me in November 1993, they did appear to me, as I said, originals of the law firm files, so I sent them back to the Rose Law Firm.

Senator SARBANES. When you use the phrase which were among the late Vincent Foster's files, with respect to these three files, the line of questioning here this morning has been on the premise that these were files in Foster's office.

What I'm trying to explore here is whether these were files that had been Foster's files at the firm or had been collected by him in the course of the campaign and were then part of this box that was furnished to you from the campaign which you were sending back. Do you know the answer to that question?

Mr. KENDALL. Well, to the best of my knowledge, Senator, they were his files in his custody. I don't know if they were his own files that he had kept at the Rose Law Firm. And at the end of the campaign, they had gone to either Ms. Wright or Mr. Hubbell. To my knowledge, they never went to the White House in any way, shape or form.

Senator SARBANES. So these files, to your understanding, came from the files Betsey Wright had, that were then turned over to Mr. Hubbell, which Hubbell turned over to you; is that correct?

Mr. KENDALL. That's my understanding.

Senator SARBANES. Fine.

Mr. BEN-VENISTE. And finally with respect to that then, is it your testimony that, to the best of your knowledge, these files were never in Mr. Foster's possession during the period of time he served as Deputy White House Counsel?

Mr. KENDALL. That would be my testimony.

Mr. BEN-VENISTE. And any inference that these were files that were somehow secretly removed from Mr. Foster's office and not transmitted over to Williams & Connolly with the Barnett files would be then a totally inappropriate conclusion?

Mr. KENDALL. Correct.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Mr. Kendall, since you have elected to answer some questions—

Mr. KENDALL. Volunteering is always a dangerous thing, Mr. Chertoff, but I think it's important to clarify that there is really no mystery here.

Mr. CHERTOFF. Let's ascertain your basis of knowledge here. You received a large quantity of files from Mr. Hubbell in November?

Mr. KENDALL. That's correct.

Mr. CHERTOFF. That's on November 17?

Mr. KENDALL. I don't know the exact date. He had lunch with me on a Wednesday or a Thursday and brought a few files; and then I went out in the law firm van on a Saturday and got more files.

Mr. CHERTOFF. OK. Was Mr. Barnett with you at that lunch?

Mr. KENDALL. He was not.

Mr. CHERTOFF. Because we have a copy of Mr. Hubbell's calendar that indicates, "Wednesday, November 17th at 12:15, Bob Barnett and David Kendall."

Mr. KENDALL. My best recollection is that Jim Fuller of my law firm was with me.

Mr. CHERTOFF. All right. Now, what were the small number of files he handed you on the spot?

Mr. KENDALL. I can't remember.

Mr. CHERTOFF. Then there was a large volume of files afterwards?

Mr. KENDALL. That's correct.

Mr. CHERTOFF. Now, could the small volume of files he handed you have been Madison Guaranty files?

Mr. KENDALL. It's possible.

Mr. CHERTOFF. And your knowledge of where those Madison Guaranty files came from and the various routes that they took to get to you is totally based on what Mr. Hubbell told you on that November day you met with him?

Mr. KENDALL. That's correct.

Mr. CHERTOFF. And what Mr. Hubbell told you is that this was a set of files that he had been carrying around with him, left over from the campaign?

Mr. KENDALL. Well, I think, again, my impression is he had gotten files from different places, but certainly he had campaign files from Betsey Wright.

Mr. CHERTOFF. So he had a campaign file but he also had files he had accumulated from different places?

Mr. KENDALL. I think that's correct.

Mr. CHERTOFF. He didn't elaborate—let me withdraw the question. He didn't give you a document or a record indicating from where he had gotten all the files he had accumulated?

Mr. KENDALL. That's correct.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Bennett.

OPENING COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Thank you, Mr. Chairman.

Senator SARBANES. Mr. Chairman, if our time is not up, I would like to ask Mr. Barnett a couple more questions.

The CHAIRMAN. We're going to finish this.

Senator BENNETT. I'll be happy to yield to Senator Sarbanes.

Mr. KENDALL. Mr. Chairman, could I trade places with my partner again? I feel much more comfortable behind him than in front of him.

The CHAIRMAN. Yes, absolutely, Mr. Kendall.

Senator Sarbanes why don't we let Senator Bennett finish his line and then we will go to you for your full 10 minutes.

Senator BENNETT. Mr. Chairman, I had come here to pursue what appears to be inconsistencies in recollections and versions. I have decided not to do that because just about everybody else has done that, and I don't think I will get any more nourishment than anyone else has out of the exercise.

But I have a comment I would like to make, and then if the witnesses might want to comment on it, that's fine; if they don't, that's fine too. Like Senator Mack, I am not a lawyer so I don't proceed in the let's question this, let's question that, and then let's put the two together and see if they match, and if they don't, let's get all excited sort of game that I guess they teach you in law school in the first year.

But I remember the old Sherlock Holmes story about the dog that didn't bark and the whole case turned on the fact that the dog didn't bark, and when Sherlock Holmes raised the issue about what about the dog, he was told by the investigator don't worry about the dog, he didn't bark. And Holmes said, yeah, but he should have barked, and that was the Arthur Conan Doyle solution to that one.

I have listened to all of this, and follow it through now. We start off the night of Vince Foster's death. Maggie Williams is in the office—and her story to me is perfectly plausible—weeping, distraught at the loss of a close friend.

But then a uniformed Secret Service officer says she took files from the office and she says no, she didn't. And the files, you know all of the details, where they end up, they end up in the residence, but she says Mrs. Clinton never looked at them. Now, her only function is to deliver them to a lawyer who takes them away because he's the lawyer for the Clintons on a personal basis.

And I ask myself why didn't Mrs. Clinton look at the files. What were they doing in the residence if they were not there for her convenience to look at the files. If I had been Mrs. Clinton in this circumstance, and someone who had been handling my personal affairs had shot himself, I would want my Chief of Staff to go look for things that would apply to me personally. I would want them in my personal possession, and I would want to take the time to go through them because I would want to be refreshed on exactly what he was doing.

I see nothing wrong with Mrs. Clinton looking at the files. I see nothing wrong with Mrs. Clinton telling her Chief of Staff I want to look at that. But that's the dog that didn't bark. Mrs. Clinton, no, she had nothing to do with these files, no, I didn't take any files anyplace. They were strictly in the residence for safekeeping. To me, that is the most difficult thing to swallow about all this.

If the purpose of the files, of hanging on to the files was to turn them over to Mrs. Clinton's personal attorney for his review and control at an appropriate time, they don't have to be carried to the residence so that his personal—her personal attorney can come get them. They can be stored in a closet in the Office of the Counsel to the President. They can be handed over to the Secret Service. We have no interest in these files, they're going to be picked up by Mrs. Clinton's personal lawyer, you secure them.

Nobody from Mrs. Clinton's staff has to be involved at all if the sole purpose is to just keep them safe until Mr. Barnett can come tape them up, and then carry them out of the White House, or because it's a hot day, get somebody with a little less seniority to carry them out of the White House. I understand that process.

So my observation, having gone through all of this and again today, really has nothing to do with the contradictions between Mr. O'Neill and Ms. Williams, whether Mr. Barnett saw Mrs. Clinton or didn't see Mrs. Clinton or who was where or who went up on the elevator and who came down on the elevator and the logs back and forth.

That's probably a fun thing to pursue, but my question, sitting through this whole thing, is why didn't Mrs. Clinton want to see the files, why wasn't it perfectly appropriate for her to see the files? What were they doing in the residence if she wasn't going to see the files? Which leads me to the suspicion that maybe, indeed, there is something going on here that does smack of some kind of a coverup.

If anybody wants to respond, I'll be happy to—but Mr. Chairman, that's where I come out after listening to all of this.

Mr. Barnett, would you respond, as lawyer to the Clintons, is that a logical thing for me to say?

Mr. BARNETT. I would be happy to respond in a couple ways, Senator Bennett. I appreciate your question and your statement. I certainly, while I may not agree with the conclusion, I certainly understand where you are coming from.

Let me say a couple things. First of all, I want to be clear that I cannot account for anything that you are talking about that happened before I took—

Senator BENNETT. I understand that. Isn't it logical that she would want to look at the files?

Mr. BARNETT. My late senior partner, Edward Bennett Williams, used to talk about looking at things through clean transparent windows, and looking at things through unwashed windows. Let me explain what I mean.

Senator BENNETT. I know exactly what you mean. I have written a book about it. Call it the belief window.

Mr. BARNETT. But you could look—let's say, hypothetically, Mrs. Clinton did do what you hypothesized. Well, then there would be some—not you obviously, because you have stated your position clearly—who would say gee, she shouldn't have looked at those, she tampered with them, I wonder if she took anything out of them, did she change them, what did she do with them. So it's kind of a you can't win situation. It's a gotcha situation. If you didn't look at them, you are criticized. If you did look at them, you are criticized.

I am giving you an honest answer. You asked me to reflect on your statement. So I completely understand what you are saying, but I also understand fully that—it sounds a little immodest to say—but I think she reposed confidence in me. She reposed confidence certainly in her Chief of Staff and dear friend, Maggie Williams.

I think she was suffering great grief, and I think probably what happened—I don't know this—is that she said, we don't want any balls dropped that are ongoing with respect to Mr. Foster's responsibilities, let Barnett take this over and get the job done, he needs the files to do it, so please let him have the files. That's what I think happened, but, again, I cannot speak to things that are not in my personal knowledge.

Senator BENNETT. I understand that. If you are caught in that trap, I just quote from our dear friend Alan Simpson who is going to leave this place poorer for his having left, when he quotes his father, who served with my father and with Senator Dodd's father, who said, "If you are damned if you do and you are damned if you don't, then do."

I think, in that circumstance again, I can only put myself in—

Senator DODD. I'd say to my colleague that was probably true 25 or 30 years ago, but today it's if you do or you don't, don't, I mean, that is what we've come to, because as I think counsel pointed out here, I'm sure all of us have situations where we've looked at facts that have been presented by our staffs, you can do this and you can do that. It's perfectly all right if you do it, but let me tell you what the perception will be, Senator, if you go to that event or if you go to that particular place.

So we sit there and say yeah, I know it's perfectly all right for me to be there but the perception of me being there is going to be such that it's not worth the grief of going through it. So in a sense, given the choice, the better choice to make is the one that was made: Don't let me get near this stuff, because someone's going to then ask me what I did with them and I'm cooked at that point. Because no matter what I say, the perception is going to be I've monkeyed around with this.

Mr. BARNETT. But Senator Bennett, I do want to say again—because I don't know if you were in the room—on no occasion, no occasion did Mrs. Clinton suggest, instruct, or any other way indicate that anything improper should be done with the files or anything involving the matters that the files dealt with. And nothing was done. That I can testify to from personal knowledge as to my role here. So I want to state that for you.

Senator BENNETT. My only concern, Mr. Chairman—concern is not the right word. My hesitation about accepting all of that at face value—

The CHAIRMAN. It's not criminal.

Senator BENNETT. —is the way the files were handled. The way the files were handled leads you to believe that there was an attempt made to create a circumstance where the files could have been reviewed and then to deny that that circumstance was created.

And if—from a PR background, because I used to be a PR man rather than a legal background, my advice would be yes, we looked at the files, you are darn right we did. We wanted to know what was in it and we spent a couple hours going over it and we didn't find anything wrong. At which point we said, seal them up and send them to Mr. Barnett, who can handle them from now on. I would find that credible, and furthermore, perfectly logical and defensible, but then I am not a lawyer.

Thank you, Mr. Chairman.

The CHAIRMAN. You see, and I thank the Senator. I think it is good sometimes not to have that plain down-home practicality.

It even goes further because you have to understand when we get information that indicates, even from Mr. Nussbaum's own testimony, and not even taking it literally, and from aides that indicate that people at the White House and the First Lady are concerned about the manner in which unfettered access will be given. And then the changing of the agreement, and the collecting of the materials thereafter, it seems to almost treat it in a cavalier manner and say just send it to the lawyers, doesn't square with the first efforts to secure it, to see that Justice Department people don't look at it.

I have to say that Senator Bennett is absolutely right. Given that it would seem that you darn well want to, whoever it is, review those files. Absolutely. And if you said, I reviewed them, what's anybody going to say?

Senator SARBANES. You would be skinning her alive if she reviewed them.

The CHAIRMAN. Senator Sarbanes, I would say this to you, it is not credible to believe that people just willy-nilly turn these over—I usually don't say willy-nilly—but turned them over as has been

described by Mr. Barnett and did not review the contents of the files.

Senator SARBANES. We'll have to sort that out, but it defies common understanding to sit here and assert that if the testimony was that they went through these files that you wouldn't be skinning them alive over going through the files.

The CHAIRMAN. I think they did, but they did it in a manner——

Senator SARBANES. It's clearly a situation in which either way you are going to attack them because the purpose is to make the attack.

The CHAIRMAN. Senator Bennett.

Senator BENNETT. Just to nail it down—the red light is on—but just to nail it down, for me the most difficult things to reconcile with the version of events that we're being given here are: Mr. O'Neill's testimony that the First Lady's Chief of Staff took files—to me a logical thing for her to do under the scenario I have described—he says she took files, she says she absolutely did not. The second thing is that the files ended up in the residence. You don't store files in the residence. It doesn't seem to me that you are having safekeeping to give to the President's personal lawyer. There are lots of other places that to me make more sense. Those are the two points that I have the most difficulty with, saying that the Secret Service man was wrong when he saw Ms. Williams carry these files out, and then the files end up in the residence and they are there for X number of days.

The most logical thing for me is if we're going to save them for the personal lawyer, you leave them where they are and you let the Secret Service secure them. And if, in fact, people are saying to the First Lady, don't go near those files, first thing I would advise her, well, for heaven's sake, don't bring them to the residence if she's not going to go anywhere near them. Keep them where the paper trail of who has custody for them is very clear. Don't store them in a closet on the third floor. Those are the two areas that I have.

Mr. DENNIS. Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Mr. DENNIS. I'm sorry to impose. I wanted the record to reflect the previous testimony of the two polygraphs concerning the issue of the records at the White House and Mr. Foster's office, that she passed both of those polygraphs. And I believe that's a part of this record that has not been disputed.

The CHAIRMAN. Mr. Dennis, it is so noted.

Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I might just follow that up that we know that Mr. O'Neill, this officer testified or was interviewed by the Independent Counsel five times, I believe, and of course we tried to get from the Independent Counsel those interviews and were denied those interviews, which I think would have been very helpful in indicating to us the nature of O'Neill's remembrances, particularly since apparently they brought him back almost half a dozen times in order to question him further.

Senator Dodd.

Senator DODD. No——

Senator SARBANES. Mr. Chairman, do you intend to break for lunch or try to finish up?

The CHAIRMAN. No, I think we would like to finish up if we can. It's within our grasp. If you have no questions, we will go to Senator Grams.

Senator DODD. I'm fine, Mr. Chairman.

The CHAIRMAN. Senator Grams.

OPENING COMMENTS OF SENATOR ROD GRAMS

Senator GRAMS. Thank you very much, Mr. Chairman. I just have a couple brief questions that I would like to go through again.

This goes back to the morning of July 22 and this was a very important morning for a number of people. If you follow—and I would like to have put up on the Elmo—the review of documents dealing with some of the phone conversations, the phone calls that were made, messages that were left, pages that were done involving just a few people, and that was Ms. Williams, the First Lady in Arkansas, Susan Thomases in New York, and Bernie Nussbaum back in Washington, DC.

Now, Ms. Williams, according to the phone records that have been obtained by this Committee, on July 22, you called—and this is from your home I would assume—the Rodham residence in Little Rock from 7:44 to 7:51 in the morning. Who did you speak with that morning? Was that Mrs. Clinton?

Ms. WILLIAMS. I don't recall. I probably was trying to reach her. I don't recall if I got her.

Senator GRAMS. It was a 7-minute conversation. You don't know who you talked to or what you talked about?

Ms. WILLIAMS. No, I don't recall. As I said it's not an office, it's actually a residence, it's her mother's residence.

Senator GRAMS. That's right. I know that.

Ms. WILLIAMS. And if she were up, I'm sure I wanted to talk to her. If she were not, then I would have talked to Mrs. Rodham, I would have talked to Chelsea, I would have talked to pretty much whoever answered the phone.

Senator GRAMS. According to the White House entry records, you did then enter the White House about 8:10 a.m.; this is about 19 minutes later. How long does it take you normally to go from your home to the White House?

Ms. WILLIAMS. I don't know. Maybe 15 minutes, depending on the traffic, time of day.

Senator GRAMS. So basically right after you hung up, according to the records, you probably left and went to your office?

Ms. WILLIAMS. That's possible.

Senator GRAMS. Now, in between that time there was a call from the Rodham residence to Susan Thomases, and that was from 7:57 a.m., 6 minutes after the phone call ended in Little Rock, to 8:00 a.m. Immediately thereafter, Ms. Thomases paged Mr. Nussbaum at 8:01 a.m.

Is there any connection that you can think of between these calls, that you happened to place a call to the Rodham residence, the Rodham residence places a call to Susan Thomases in New York, Susan Thomases immediately calls back, and pages Mr. Nussbaum? Any kind of connection there that you don't think was important that triggered or was this all coincidence?

Ms. WILLIAMS. I don't know—

Senator GRAMS. You started the ball rolling, I assume, at 7:44 a.m. is what I'm saying.

Ms. WILLIAMS. Well, at 7:44 a.m. I called Mrs. Clinton.

Senator GRAMS. That's right.

Ms. WILLIAMS. It wouldn't be unusual for me to call Mrs. Clinton early in the morning.

Senator GRAMS. But something in that conversation prompted her to call Susan Thomases and Susan Thomases to call Bernie Nussbaum.

Ms. WILLIAMS. I don't know that. There is nothing that I can recall.

Senator GRAMS. At 8:25 a.m., Susan Thomases then called the Rodham residence again for 4 minutes, and at 9:00 a.m., Ms. Thomases then left a message for you at your office. Now, that seems to be an extraordinary amount of activity for a manner of 75 minutes. A reasonable person could or would draw a conclusion that the calls were connected. What was the reason or the contents for these calls? Again, I'm asking you directly.

Ms. WILLIAMS. I only know about my call at 7:44 in the morning to Mrs. Clinton. I was probably trying to reach her. I more than likely was concerned about her and I probably wanted to reach her before she started her day because I believe that day she had some events, or at least one event, so I wanted to talk to her.

Senator GRAMS. So in other words, her call immediately after from the Rodham residence to Ms. Susan Thomases, from Susan Thomases to Bernie Nussbaum, and then again, 4 minutes, that Ms. Thomases then called the Rodham residence herself for 4 minutes, and she again left a message for you at your office, somehow none of these are connected? Nobody should draw a connection that there was any kind of conversation, questioning, or inquiries going on among this very local group, that had anything that wasn't important, that would not shake your memory?

Ms. WILLIAMS. Well, as I said before, I can tell you about the call I made. That's really the only call I know about, the call I made.

Senator GRAMS. According to the records again, you were paged at your home at 12:47 p.m. from the Rodham residence, which you returned at 12:55 p.m. In between that time, as you know, Bernie Nussbaum reneged on his agreement to allow career prosecutors from having access to Foster's office. Mr. Nussbaum again told Mr. Neuwirth about the concerns of the First Lady and Ms. Thomases about law enforcement officers having unfettered access to Foster's office. Ms. Thomases made six more calls to Mack McLarty and you over a span of 1 hour.

Now, this seems to make the connection, and again the content of the calls that go back to beginning at 7:44 in the morning. Somehow that you have no recollection of what those calls were, you had no reason to believe that they concerned the files or anybody going through Vince Foster's office, nothing of this happened to connect, even though we have the testimony about the concerns of the First Lady and Ms. Thomases, two of the important people in this loop, about law enforcement officers having unfettered access. You seem to be at the center of a lot of these calls and the activity.

Ms. WILLIAMS. I know about the call I made at 7:44 a.m., and I have told you about what I think that call was about.

Senator GRAMS. Do you remember why you went home in the middle of the day on the 22nd? Now, it's hard to believe that laundry would be more important than being in the office that day or making these calls. The laundry apparently wasn't important the night before, and I can see maybe that being done and I know you do work long hours and that maybe sometimes you would have to do this, but it just seems implausible on this day that you would pick to go home and do laundry.

Ms. WILLIAMS. I don't know if you were here for my testimony.

Senator GRAMS. You said maybe you threw in some laundry or something.

Ms. WILLIAMS. No, my testimony about it was about whether or not it was extraordinary that I would be home in the middle of the day.

Senator GRAMS. I am talking about this day in particular.

Ms. WILLIAMS. This day in particular was not the focus of the earlier question. This day in particular I do not know why I went home.

Senator GRAMS. Officer Henry O'Neill testified that he saw you take files out of Foster's office on the night of the 20th and he saw you put them in your office. Did you take these files home with you on the 22nd, or any time, take any of these files home with you?

Ms. WILLIAMS. No, I did not.

Senator GRAMS. You must have returned to the White House by that afternoon because you spoke to Ms. Thomases—again I am on the 22nd. You had these conversations early in the morning before you left home. You went to work, had pages, conversations, and you went home over the noon hour. Now, you're back at the office because you spoke to Ms. Thomases from 3:08 to 3:18 p.m.; is that correct?

Ms. WILLIAMS. If that's what the record says.

Senator GRAMS. You have no idea why you talked to her that day?

Ms. WILLIAMS. I can't remember what the conversation was.

Senator GRAMS. You and Bernie Nussbaum conducted a second search from 3:30 to 4:30 that afternoon; is that correct?

Ms. WILLIAMS. I didn't conduct a search—

Senator GRAMS. Were you with Mr. Nussbaum in Mr. Foster's office that afternoon?

Ms. WILLIAMS. At one point I was, yes.

Senator GRAMS. You called Mrs. Clinton that afternoon and then you took the files to the residence sometime, I guess now it was 7:30 p.m. rather than between 4:30 and 5:30 p.m.?

Ms. WILLIAMS. I don't recall.

Senator GRAMS. Again, this is a chain of events, of files reviews, calls, leading to conclusions people could draw, that all of this circled around these files. I don't know what was really in the files, I have never been able to see a list of the contents. I don't know what was the criteria for things that were put into a box that was to be taken to the residence. Was there a criteria that you can remember or think about? Was there some kind of commonality between or interest? Were they all personal files of the Clintons, were they all dealing with Whitewater, did they all deal with some other materials? What was the criteria you used or was used that you

know about in the afternoon to compile this box of files, that evidently was so big Mr. Barnett did not want to carry them? It seems like a lot of files.

Ms. WILLIAMS. I don't remember that it was one box of files as I recall. I don't know if it was full. And the only criteria I know about is that they were personal files of the Clintons.

Senator GRAMS. So that was the criteria evidently?

Ms. WILLIAMS. Right. That's the only one I know of.

Senator GRAMS. After you did talk to Mrs. Clinton that afternoon, Ms. Thomases then called you, and according to the phone records, the call was from 5:13 to 5:22 p.m. Did you receive any instructions from Ms. Thomases at 3:08 p.m. to conduct the second review with Mr. Nussbaum and then to contact Mrs. Clinton about what to do with the Foster files and she was checking back with you on this?

Ms. WILLIAMS. No, I generally don't receive instructions from Ms. Thomases.

Senator GRAMS. What was the phone call about, do you remember, at 3:08 p.m.?

Ms. WILLIAMS. I don't know if it was the day before the funeral. Was Vince's funeral the 20—oh, it could have been, I think I remember Susan testifying it could have been that she was saying she wasn't going to Vince's funeral.

Senator GRAMS. Well, the reason I have been asking you these questions about your whereabouts and your phone calls is because the evidence shows that I believe you were very instrumental to the events that transpired, beginning with your first phone call at 7:44 in the morning to the last phone call later in that afternoon from Ms. Thomases at 5:13 to 5:22 p.m.

In addition to being the Chief of Staff to the First Lady, you were in the center of this loop of conversations that went on that day, yet the only answers that we've been able to hear from you today and in previous hearings is that you don't recollect very significant events that transpired.

I remember I had a brother-in-law that died in 1970. I can remember those phone calls yet today. I can remember the first time I saw my sister after his death and when we talked. There are a lot of things that heighten your concerns or your awareness or your memory, but to have all of this just completely conveniently forgotten or don't recall or don't remember, but yet the phone records indicate a very significant pattern and concentration of events and criteria and focus—

Ms. WILLIAMS. I had a father who died and to this day I don't know how I got from my room in college to the plane. It was also exam time and people tell me now that I negotiated with all of my teachers for getting my exams put on different dates.

Not to belittle your experience in the least, but there are other people who have experiences, and if I did not remember, I did not remember. I am not going to make it up because it doesn't fit what you would think. What I recall is what I recall.

Senator GRAMS. Well, I can understand that there are times of grief, but during this time of grief, dealing with the death of Mr. Foster, there seemed to be some very significant events that took place, business and activities were conducted and calls were made,

reports were done, inquiries were made. I just still find it hard to believe that neither you nor Ms. Thomases nor anybody else connected within this loop, Mr. Nussbaum or others, can give significant answers except I don't know, I don't recall, I can't remember. I think this is what's led to a lot of the anxiety of this Committee.

Ms. WILLIAMS. But these events weren't significant to us. They are significant to you in this context. During the course of this day, this is the day after somebody we know just shot himself in the head. I mean, if I got one call from Susan, I got 20 from four other friends.

Senator GRAMS. It doesn't show up here, but what I am saying is this makes a pretty closed loop of individuals calling, specific things being done, and that's why I think there's been a lot of doubt and confusion raised.

Mr. Chairman, I have no more questions.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Ms. Williams, I want to be clear on one point because I don't want to leave any inferences or implications on the record. Senator Grams asked you, he says O'Neill said you took files out of the office. Did you take any of those files home with you, when you went home that day? And you said no, you did not.

But you challenge even the basic premise of that question, do you not, namely O'Neill's testimony that you took files out of the office? And at least I want to go back at that point because what's happened here is, you have had a line of questioning and you answered the question, but you may have left an implication which they later are going to come back and haunt you with, which was well, what she said was she didn't take any of the files home with her when she went that day, but she didn't challenge the assertion that she took files out of the office according to O'Neill. Now what about that basic question? As I understand, it's your position you did not take any files out of the office; is that correct?

Ms. WILLIAMS. Right. It's not only my position, it's also the result of two lie detector tests.

Senator SARBANES. And so obviously you didn't take any of the files home with you that day because you never took any files out of the office to begin with; is that correct?

Ms. WILLIAMS. That's correct.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. If I may, Senator Sarbanes, to try to close the loop on the issue raised by Mr. Kendall's letter of November 22, 1993, that's been alluded to here today with respect to the three files that were transmitted by him to the Rose Law Firm on that date, I would like to say, Mr. Chairman, that we have here those three files. We have had those three files for more than 2 months. We have reviewed those files which came from the Rose Law Firm, together with Mr. Kendall's cover letter, and there are about 350 pages, more or less, of documents. There's no smoking gun in these documents, there's nothing incriminatory in the least in these documents, to the best of my knowledge. But since that issue has surfaced here with the implication that somehow files from Mr. Foster's office were secreted and later transmitted to the Rose Law Firm, we have all of those documents, Mr. Chairman, and we have had them for more than 2 months.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

I just want to observe, I know Mr. Ben-Veniste helpfully described these three files as containing 350 pages of documents which actually are copies of work that the Rose Law Firm did on Madison matters involving the raising of capital for Madison, a bank which, as we know from the examination reports, was engaged in corrupt and fraudulent transactions, some of which went to the whole issue of whether it was a solvent bank.

I understand, Mr. Kendall, you don't know the providence, you don't know where all these documents were. You got them from Mr. Hubbell in November. But to the eye of Mr. Margolis, if those documents had been in Mr. Foster's office, they might not have been a smoking gun, but maybe a kind—

Mr. BEN-VENISTE. But they were not in Mr. Foster's office.

The CHAIRMAN. You don't know that. Mr. Ben-Veniste, on your time if you want to make an assertion and say that you know with definiteness that these documents were not there, or that Mr. Barnett testified to that, then you can do it. And then we'll have a proper discourse back and forth.

Don't interrupt counsel, number one, when he's making a point. A point certainly that I would say we don't know. But it raises a very real question as to whether or not they were, and how did Mr. Hubbell come into these? Mr. Barnett testified he could not say, as it relates to these documents, that was the source of these documents, and we understand the testimony that indeed Mr. Hubbell was the repository of certain documents during the campaign. Mr. Barnett is not in the position—at least that was the testimony—to testify that these three were. So if we want to review again with Mr. Hubbell, and bring him back, we'll bring him back, and we'll ask him more questions. We're going to ask him more questions again anyway.

Go ahead, Mr. Chertoff.

Mr. CHERTOFF. Now, let me address with you, Ms. Williams, an issue that was raised by Senator Bennett, which really is the whole question of an argument that we have heard made on every occasion we have been here addressing this issue. And it's really a common sense argument.

Everybody can understand that at a time of grief people do not want to be bothered with documents. That's not the uppermost thing on your mind. What you care about is people. All that makes perfect sense.

Yet here we are on the 22nd of July, Thursday, the afternoon before you're about to go to a funeral. It's 3:30 in the afternoon. You are called over to Mr. Nussbaum's office, they've just ushered the law enforcement people out. They've left. You are there. Your testimony was you go through, you pick up a tax file, you put it in a pile to go to the residence.

And your testimony is you are exhausted at this point. You are so tired and so unfocused on this and so preoccupied with the fact that you have to get up the next morning to go to this funeral you don't even want to wait for the amount of time it's going to take to get Mr. Barlow or whomever from Mr. Barnett's office to come over to the White House. That all makes perfect sense. And a nor-

mal, reasonable person examining that with common sense would then come to the conclusion that you would tidy up the documents, lock the office to Mr. Foster's room, and then leave.

In fact, your testimony over the summer was that you wanted to get out of there by about 5:30 or 6:00 p.m., so rather than wait around another half an hour—and we've established now that Mr. Barlow took about a half an hour to get into the residence—you just up and took them up to the residence and left.

But the problem is now we have records which we did not have over the summer that show you didn't leave at 5:30 p.m. You didn't leave at 6:30 p.m. You didn't leave at 7:30 p.m. At 7:25 in the evening, 4 hours after you began the exercise of going through the documents, you went with Mr. Castleton and took them upstairs. And it is unbelievable that a person who is pleading exhaustion and the desire to go home after having spent an hour with these documents from 3:30 to 4:30 p.m. is then going to wait 3 hours to take them up to the residence.

The question is this: Why didn't you call for the messenger at 5:30 p.m.? Why didn't you call for the messenger at 6:30 p.m.? Why did you stay there until 7:30 p.m. and then take the documents to the residence?

Ms. WILLIAMS. First of all, when I had been asked about what the times were, I gave you what I thought the times were. I was exhausted. I took them there. I mean regardless of what the time—maybe I am wrong about the times. But the fact remains that I was still exhausted, and I didn't want to wait.

Now, I don't know everything that I did in between times. I don't know if it's ever happened to anyone here that you start off thinking I'm going to be at this place at 5:30 p.m. and maybe 2 hours later you end up there because of everything that happens along the way. I know that would seem implausible that that would happen, that something else might come up.

As you know, we were working on the manifest for the funeral. There were a lot of other arrangements that were going on that I was involved in. You know, I was tired, I put them up there.

Mr. CHERTOFF. You can't have it both ways.

Ms. WILLIAMS. I'm not trying to have it both ways.

Mr. CHERTOFF. You can't both be tired and you don't want to wait around and then wait around for 3 hours.

Ms. WILLIAMS. I think that happens most days with most people who work.

Mr. CHERTOFF. Now, let me ask you something else. Does the number 202-628-7087 mean anything to you?

Ms. WILLIAMS. No.

Mr. CHERTOFF. You don't know of any auxiliary line or special line that you used to bypass the White House switchboard when it's busy to make a call in?

Ms. WILLIAMS. No.

Mr. CHERTOFF. Ms. Blair, let me ask you. I want to direct your attention to this period on the 27th of July. You indicated you were in Washington because you were nominated to the Corporation for Public Broadcasting?

Ms. BLAIR. Excuse me. You said the 22nd?

Mr. CHERTOFF. On July 27, you were in Washington because you were nominated to the Board of the Corporation for Public Broadcasting?

Ms. BLAIR. Yes, sir.

Mr. CHERTOFF. You were staying at the White House?

Ms. BLAIR. Yes, sir.

Mr. CHERTOFF. Was that a frequent occurrence?

Ms. BLAIR. Fairly frequent, yes, sir.

Mr. CHERTOFF. So in 1993, were you and/or your husband, on a fairly regular basis, guests at the White House overnight?

Ms. BLAIR. I was, sir.

Mr. CHERTOFF. Was your husband also?

Ms. BLAIR. No, sir.

Mr. CHERTOFF. Your husband is James Blair?

Ms. BLAIR. That's correct.

Mr. CHERTOFF. He's the General Counsel for Tysons?

Ms. BLAIR. Yes, sir.

Mr. CHERTOFF. He's done legal work from time to time for the Clintons?

Ms. BLAIR. That is correct.

Mr. CHERTOFF. Has he done legal work on Whitewater?

Ms. BLAIR. I don't—I'm not comfortable answering that because I don't know what constitutes his business and——

Mr. CHERTOFF. That's fine. I don't——

Senator SARBANES. What are we going to do to Ms. Blair afterwards on the——

The CHAIRMAN. We accept the fact that she's not sure and she just doesn't know. Go ahead.

Mr. CHERTOFF. Now, do you know Ms. Thomases?

Ms. BLAIR. Yes, sir.

Mr. CHERTOFF. Did you see Ms. Thomases on the 27th?

Ms. BLAIR. I don't remember if I saw her on the 27th. I know I saw her sometime during that week.

Mr. CHERTOFF. Do you remember where you saw her?

Ms. BLAIR. In the White House.

Mr. CHERTOFF. In the residence?

Ms. BLAIR. Yes, sir.

Mr. CHERTOFF. On the second floor?

Ms. BLAIR. I believe it was on the second floor.

Mr. CHERTOFF. Was it in the presence of Mrs. Clinton?

Ms. BLAIR. My recollection is that one evening, Ms. Thomases was there with Mrs. Clinton, and I was present also.

Mr. CHERTOFF. We are going to have Ms. Thomases back. My recollection is that your testimony was that week, which is the week you said you saw her, she was there on Tuesday. That's the 27th of July, and we have records of her on the premises. Does that help narrow to you the fact that you would have seen her on the 27th?

Ms. BLAIR. It wouldn't in the sense that I was there throughout that week, so that——

Mr. CHERTOFF. But it was clearly that week that you saw her?

Ms. BLAIR. I think I saw her during that week, yes, sir.

Mr. CHERTOFF. So that if we can establish from her that the only day she was there that week was Tuesday, you are comfortable with that?

Ms. BLAIR. Yes, that would be fine.

Mr. CHERTOFF. Now, did you see Mr. Barnett?

Ms. BLAIR. I don't recall seeing Mr. Barnett.

Mr. CHERTOFF. Did you see Ms. Williams?

Ms. BLAIR. If I were coming and going at the White House, as I was that week, probably sometime during that week I might have seen Ms. Williams coming and going, but I don't—again, let me say, as I answered earlier, sir, I never saw boxes, documents, files, I never heard any discussions about any of those things.

Mr. CHERTOFF. I am not asking whether you saw boxes. I just want to ascertain, did you see Ms. Williams in the presence of Ms. Thomases?

Ms. BLAIR. Not that I recall.

Mr. CHERTOFF. Now, Mr. Barnett, do you remember seeing Ms. Thomases when you were at the residence?

Mr. BARNETT. On what date?

Mr. CHERTOFF. On the 27th.

Mr. BARNETT. No, I have no recollection of seeing Ms. Thomases when I was there on the 27th.

Mr. CHERTOFF. Ms. Williams, did you see Ms. Thomases on the 27th?

Ms. WILLIAMS. I saw her one day in my office, maybe that was the preceding week.

Mr. CHERTOFF. That was your testimony over the summer; that was the preceding week.

Ms. WILLIAMS. Right.

Mr. CHERTOFF. Did you see her in the residence on the 27th?

Ms. WILLIAMS. Oh, no, I don't recall seeing her.

Mr. CHERTOFF. Let me ask you this, Ms. Williams. I am going to conclude with this. Ms. Thomases told us she did not go to the funeral over the weekend. We have had a lot of testimony, most recently in response to Senator Grams' questions, that during the 22nd, which was the Thursday before you left for the funeral, there's a lot of telephone contact, Ms. Thomases is trying to reach you, and this is about issues of personal concern and comfort. You don't see Ms. Thomases on the weekend because she's not in Washington; correct? Right?

Ms. WILLIAMS. No.

Mr. CHERTOFF. I beg your pardon?

Ms. WILLIAMS. No, I don't see her on the weekend.

Mr. CHERTOFF. She comes down finally on Tuesday, and this is the first day after the funeral. She has come to Washington. She is in the residence. You were in the residence. We have now heard limitless testimony about how she was concerned about your feelings and you were concerned about her feelings and this is why we're having all these telephone calls. Here it is the day after the funeral, you're both in the residence at the same time for an overlapping hour, hour and a quarter, and you and Ms. Thomases never managed to even exchange a word of comfort during that period?

Ms. WILLIAMS. I don't recall seeing Susan in the residence, but please keep in mind the residence is a big place. I could not see Diane Blair. I could go into the residence and spend 2 hours there and never see Mrs. Clinton either. So I don't remember seeing Susan that day. I don't recall seeing her that day.

Mr. CHERTOFF. She didn't seek you out and you didn't seek her out on that day. She didn't say I'm coming down; I'm going to be at the residence, let's get together and talk and see how you're feeling after the funeral?

Ms. WILLIAMS. I don't remember. She may have.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Grams.

Senator Sarbanes.

Senator SARBANES. I just have two questions.

Ms. Williams, the funeral was on Friday, June 23?

Ms. WILLIAMS. Yes, I think——

Senator SARBANES. I'm sorry——

Ms. WILLIAMS. —July 23.

Senator SARBANES. Friday, July 23.

Ms. WILLIAMS. Uh-huh.

Senator SARBANES. This date you are being asked about was 4 days later; right, on Tuesday, July 27?

Ms. WILLIAMS. That's correct.

Senator SARBANES. OK. Thank you.

Mr. BEN-VENISTE. If I may just to put into context again the testimony that we have received on the issue of these three files. Mr. Hubbell testified on July 14 in deposition before our Committee, reflecting the fact that he had these files in his possession, that he transferred them to Williams & Connolly. Mr. Hubbell was here on December 1. We had the files in our possession as of October 2. He was not shown these files or asked about these files with any specificity during his appearance here before this Committee.

So yes, the only testimony on this point as far as where these files came from and how they came over to Williams & Connolly was from Mr. Hubbell. But I would suggest that he was here and available before us and available for examination on this point, and he wasn't examined on this point. The notion of floating this issue out as though it's something new today I think does not put the events in the proper context, and just in terms of regular investigatory procedure.

Mr. CHERTOFF. Mr. Chairman, if I could just observe to Mr. Ben-Veniste the letter——

The CHAIRMAN. No, no.

Mr. CHERTOFF. —makes no mention.

The CHAIRMAN. I'd like you to observe to me or to the Committee.

Mr. CHERTOFF. I'm sorry, let me observe in response to what Mr. Ben-Veniste said. The letter on its face makes no mention of Mr. Hubbell. The letter on its face makes mention only to the late Vince Foster's files. Unless we were soothsayers I don't think we could have divined—well, maybe we could have suspected, but we certainly couldn't have known that it was Mr. Hubbell who was responsible for transmitting a file that, on the face of the letter, is described as one of the files of the late Vincent Foster.

But rest assured, now that we've learned from Mr. Kendall that this file was part of a group of files that Mr. Hubbell collected in a variety of places including from the campaign, and presumably presented Mr. Kendall with the notion that these were part of the late Vincent Foster's files, that the next point of inquiry is Mr. Hubbell to see whether he can remember where these files came from and why they would have been part of Mr. Foster's files, when, I might observe, Mr. Foster doesn't appear on the bill as the attorney handling the matter.

Mr. BEN-VENISTE. Well, if I may continue uninterrupted for just a moment, if one looks at the Williams & Connolly transmittal letter which describes with great specificity what the files were that were being transmitted, and then one looks at the letter from the Rose Law Firm dated October 2 from their attorney, and looks at the material, it's quite clear that these files match up, that these are clearly the files. You don't need to be a rocket scientist to figure that out.

Then the issue is whether we pursued the testimony that we had received from Mr. Hubbell that says that the collected files were turned over to him, he testified about that back in July. He was here before us on December 2. He was asked some general questions about the subject of transmittal of files, but not asked specific questions about these files. That's the only point I wish to make.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. No further questions.

The CHAIRMAN. I want to thank the witnesses for their testimony. Mr. Barnett, I want to thank you for your candor, and hopefully we will not have to bring these witnesses back again, but we thank you for your cooperation, all of you.

We stand in recess until Wednesday at 10:30 a.m. when Mr. Burton and Mr. Matthews will be called.

There has been a problem as it relates to Ms. Thomases in terms of her scheduling. We've had some representations that she would appear first on one day and for whatever reason that day did not appear to be one that could meet her needs or the Committee's, and thereafter she went out of town. We were led to believe that initially she would be back on Wednesday. It would appear now that she's going to be coming in Wednesday from Brazil.

So consequently we have asked that we put her over to Thursday—or excuse me, instead of Thursday, there was the question of trying to get her in Thursday and if she is just coming in Thursday that simply is not going to work, so we're going to put that matter over until Monday when Ms. Thomases will come in. I would suggest inasmuch as there may be only one other witness that we do that on Monday at 1:00 p.m.

If there's any change, it would seem to me maybe we would make it earlier, but so as to provide her with an opportunity to get here, and recognizing the weather is getting such that we want as many Members who do want to be here, facilitate and give them an opportunity. I would suggest that we hold that on Monday at 1:00 p.m., so that's the tentative schedule.

We stand in recess until Wednesday at 10:30 a.m.

[Whereupon, at 2:02 p.m., the hearing was adjourned.]

[Appendix supplied for the record follows:]

APPENDIX

LAW OFFICE
WILLIAMS & CONNOLLY

120 EAST FOURTH STREET, SUITE 1700

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EDWARD BERNETT PILLER, JR. 410 Ave.
P.O. Box 1000000 400 1000

DAVID E. KENDALL
(202) 434-6143

CONFIDENTIAL

November 22, 1993

BY REGISTERED MAIL

Jerry C. Jones, Esquire
Rose Law Firm
120 East Fourth Street
Little Rock, AR 72201

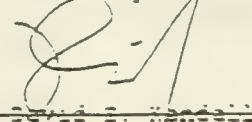
Dear Jerry:

It was good to talk to you today. I am enclosing herewith three file folders, labeled: A3830.1 MADISON GUARANTY LTD. FINRSHP Application/Brokerage Activities; A3830.2 Madison Guaranty - Net Worth - (1985) Preferred Stock Offering; and A3830.3 MADISON GUARANTY Preferred Stock Offering Corporate, which were among the late Vincent Foster's files. They appear to me to be files of Rose Law Firm documents. I thought it most appropriate to transmit them to you, for retention and storage.

I would be grateful if you would confirm for me the receipt of these files.

Best wishes for a good Thanksgiving!

Sincerely,



David E. Kendall

Enclosures

DEK/ba

RS 000381

141 and I saw something that said taxes. And I just
 151 picked it up; I thought taxes sounded personal. And
 161 I just put it on the stack, if there was a stack, or
 171 I put it in the box if there was a box.
 181 Q Did you consult with Mr. Nussbaum about
 191 that?

1101 A No. I just put it on.
 1111 Q Did you look at the tax returns?
 1121 A Oh, no. It was just -- it seemed like it
 1131 just had "taxes" written on it like the file part of
 1141 it.

1151 Q How did you know it was the Clintons's
 1161 taxes?

1171 A I didn't know; I just assumed.
 1181 Q How do you know it wasn't Mr. Foster's
 1191 taxes?

1201 A Oh, it could have very well been.
 1211 Q You didn't want to check to see whether it
 1221 was Mr. Foster's taxes or the Clintons's taxes before

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111 you sent it over to the Clintons?
 121 A Well, I have to tell you, at the time I
 131 wasn't making a connection except with the Clintons
 141 in my head. And I figured that if Bernie asked me to
 151 check around to see if there was anything else that I
 161 might see that had to do with -- I just saw it, and I picked
 171 it up.

181 Q Where was Mr. Nussbaum at that point?

191 A I think he was in the, you know, standing,
 201 like, in the doorway or something.

211 Q And did you say, Bernie, I found something
 221 marked "taxes"; what should I do with it?

231 A I put it on the stack of files. I put it
 241 on the stack of files.

251 Q And then what happened?

261 A I may -- I remember having a discussion
 271 with him about the renovation files. And I said
 281 should I take the renovation files, and he said no,
 291 that has to do with the White House counsel's
 301 office. So I remember that was the only discussion,
 311 and then I remember either leaving to get a box or
 321 leaving because I took a few more calls. Either

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111 the -- either Mrs. Clinton's secretary or Bernie's
 121 secretary or Vince's secretary heard that there were
 131 calls for me because the offices were next door. And
 141 I remember taking a bunch more calls before coming
 151 back into the room to actually pick them up.

161 Q Now the taxes file, was that actually in a
 171 file drawer in Mr. Foster's desk?

181 A It wasn't a desk. There was -- you see how
 191 you have the book shelves here and the last two
 201 shelves are drawers, so it's over off to the side.

211 Q Was that particular drawer filled with
 221 other files?

231 A No. I don't remember. Everything pretty
 241 much was out, it seemed to me.

251 Q Now you came back from returning the phone
 261 calls, and you say you brought a box back also?

1171 A Well, I'm not clear about that. I don't
 1181 know if the box was already there or if I went and
 1191 brought a box to pack them in.

1201 Q And then what did you do?

1211 A Well, part of what I had done most of the
 1221 day -- I mean, I was exhausted. I had been back and

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111 forth on whether or not I would go to Vince's funeral
 121 because I just -- you know, I didn't think I was up
 131 to it or could do it. And I know that part of the
 141 calls I was taking could have been you should go,
 151 you

161 should go, whatever.
 171 Anyway, I decided to go, and we were
 181 leaving the next morning at 7:00 or 7:30. I forget.
 191 I was really tired. By this time I really believe it
 201 was 5:30 or 6:00; in my own mind that's how I think
 211 of the time, 5:30 or 6:00, I mean, maybe even later,
 221 but I know I had fooled around on the phone
 231 between.

241 you know, actually getting the files over to Bob
 251 Barnett. And I thought by the time Bob Barnett sends
 261 somebody over here and they get through clearance

271 the White House to come and take the boxes, I will
 281 be

291 sitting around here, and I don't want to do that.

301 So I know I called: I don't know if I got
 311 Bob Barnett -- I may have gotten Bob Barnett on the
 321 phone, or I got Sylvia, his person who works, the
 331 woman who works for Bob Barnett. In any event, I
 341 told him to forget about sending anybody, that I
 351 would just get them back when I got back from the

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111 funeral.

121 Q Did you explain why?

131 A I don't know. I may have. I may have said
 141 something like it's getting too late and I've got to
 151 go. I don't remember exactly what I said. I'm sure
 161 they would probably want an explanation. So I said
 171 something like that. And then -- but then the files
 181 were, nevertheless, there.

191 Q Where?

201 A In Vince's office. And they weren't
 211 going --

221 Q And Mr. Nussbaum was still waiting there?

231 A No. I don't know where Bernie was right
 241 then.

251 Q So there was no one in the office?

261 A No, not when I went back into -- I mean,
 271 there were people in the reception area, everybody
 281 who was there, but I went in Vince's office to
 291 retrieve the files, and I guess I talked to Sylvia or
 301 Bob in that office.

311 Q Which office?

321 A In Vince's office. I may have made the

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111 call from there. And then I thought what am I going
 121 to do with these files, and then I said, well, I'll

108 *was the Mr. Burtis to whom -- or to whom --*
 109 *was the documents to Mr. Burtis but to put it in*
 110 *the residence?*

111 MR. BEN-VENISTE: She's really testified
 112 about this several times. It's getting to the point
 113 where it's argumentative.

114 MR. DODDS: I think what she's saying is --

115 MR. CHERTOFF: Please --

116 MR. DODDS: I'm entitled to ask questions
 117 to clarify the record.

118 MR. CHERTOFF: At the end of the
 119 proceeding.

120 MR. DODDS: I choose to do it now.

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121 MR. CHERTOFF: Let me say something --

122 MR. DODDS: Let me put what I have to say
 123 on the record and then you may say whatever you
 124 wish. I think what she's saying is that day, under
 125 the circumstances, it did not have the importance to
 126 her that it obviously has to everyone in this room
 127 today, and she did not parse through that analysis
 128 the way your questions imply. That's it.

129 MR. CHERTOFF: What the witness's testimony
 130 is is going to be in the record.

131 MR. DODDS: In response to leading
 132 questions, she's entitled to have the record clear.

133 BY MR. CHERTOFF:

134 Q Did you talk to Mr. Castleton about what
 135 you were doing when Mr. Castleton carried the
 136 documents up to the residence?

137 A About what I was doing?

138 Q Yes. Did you explain to him what was going
 139 on?

140 A Other than we're taking these files to the
 141 residence?

142 Q Yes.

Page 141

143 A I'm sure I said that. He had to know where
 144 he was going.

145 Q Did you tell him that the President or the
 146 First Lady had to review the contents of the boxes to
 147 determine what was in them?

148 A Why would I tell an intern that?

149 Q That's not an answer.

150 A I'm sorry; no, I don't recall. I'm sorry.
 151 I do not recall that.

152 Q I want to be clear. When you say you don't
 153 recall, you mean you don't recall one way or the
 154 other?

155 A It's -- I don't remember. I don't remember
 156 having a conversation with Tom Castleton other than,
 157 you know, we're going to the residence. He had to
 158 know where we were going. That was the amount of
 159 that conversation as far as I --

160 Q As far as you can remember?

161 A Yeah. As far as I can remember.

162 Q Did you -- in your conversation with
 163 Mrs. Clinton, did Mrs. Clinton indicate to you that
 164 one of the Presidents wanted to review the contents of

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165 the files?

166 A No.

167 Q No?

168 A The conversation that I had with her was
 169 about putting the files some place.

170 Q My question, though, to be clear, is did
 171 the First Lady tell you that she or the President
 172 wanted to personally review the contents of the
 173 files?

174 A No, she did not.

175 Q And that's a definite no. That's not an I
 176 don't remember?

177 A I don't recall her saying that to me.

178 Q Did you see Mr. Muscogum later that day?

179 A No. I think the next time I saw Bernie
 180 was -- maybe I saw him at the funeral. I don't
 181 remember if I saw him at the funeral.

182 Q Now, when you were in the office that
 183 Mr. Foster had occupied, did you see a briefcase?

184 A No. No.

185 Q Did Mr. Muscogum say anything to you about
 186 a briefcase?

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187 A No.

188 Q Did he say anything to you about a torn-up
 189 note?

190 A No.

191 Q Did you see a torn-up note?

192 A No.

193 Q Did he indicate to you that he had found a
 194 torn-up note?

195 A No.

196 Q Did he piece together a torn-up note in
 197 your presence?

198 A No.

199 Q Did he tell you he had pieced together a
 200 torn-up note in your presence?

201 A No.

202 Q Did he give you a copy of what had been a
 203 torn-up note, a pieced-together, torn-up note?

204 A No.

205 Q Did he tell you any note or notes had been
 206 found in the briefcase?

207 A No.

208 Q You came back from Late Rock on Friday --

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209 A Right.

210 Q -- right, correct?

211 A Right.

212 Q Were you in Washington, D.C. on Saturday
 213 and Sunday?

214 A Yes.

215 Q Did you have contact with the President or
 216 the First Lady on Saturday or Sunday?

217 A No, I don't think so.

218 Q No --

219 A No, I don't think so.

220 Q No communication of any sort?

(131) A Not that I can recall. I don't recall.
 (134) Q And when did you take the next step in terms of handling the documents which had been put in the residence in that closet?
 (137) A When I saw Bob Barnett.
 (138) Q Which was when?
 (139) A Tuesday.
 (140) Q Tuesday?
 (141) A Tuesday.
 (142) Q That would be the 27th of July?

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(144) A Okay. Yes.
 (145) Q And how did you come to see Mr. Barnett?
 (146) A He had come to see Mrs. Clinton.
 (147) Q About what?
 (148) A I don't know.
 (149) Q He was in the residence?
 (150) A Yeah, he was in the residence.
 (151) Q And you were called?
 (152) A No. I had come up to the residence for something else.
 (153) Q And you bumped into him?
 (154) A Yeah, I saw him. And he said you know what? It would make sense to get those documents over to the office.
 (155) Q And what did you do?
 (156) A He called someone.
 (157) Q Who was that?
 (158) A I don't know his name, but --
 (159) Q A messenger?
 (160) A No. I think he was -- I think he was an attorney.
 (161) Q From Williams & Connolly. And he made that

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(162) call from the residence?
 (163) A Yes.
 (164) Q How long did it take this person to get cleared through?
 (165) A Maybe a half hour or so.
 (166) Q Did you wait there with Mr. Barnett while that happened?
 (167) A Yeah. I may have -- well, probably in and out. I may have gone to do something and come back.
 (168) in. They were having a conversation. Mrs. Clinton and Mr. Barnett. But I had the key.
 (169) Q The key to the closet?
 (170) A Right.
 (171) Q So Mrs. Clinton and Mr. Barnett were waiting in the residence for about a half an hour while this person came from Williams & Connolly, right?
 (172) A Yeah. I'd say it was about half an hour.
 (173) Q And then this person came in, right?
 (174) A Uh-huh.
 (175) Q And then what happened?
 (176) A I got on the elevator with him. I had

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(177) them -- I called somebody to get him cleared. He

(178) came to the usher's office, which is where guests go. The ushers called up to the residence. I picked up the phone; they said the guy was there. I went and got him, took him up to the third floor, opened the closet and told them that was the box.
 (179) Q And where was Mr. Barnett and the First Lady at this time?
 (180) A They were still down on the second floor.
 (181) Q And what happened after this person had removed the box?
 (182) A I took him back down to the usher's office.
 (183) Q Did you stop and see Mr. Barnett or Mrs. Clinton at that point?
 (184) A No.
 (185) Q And that whole operation of going up to pick up the box and have this person leave took about 15 minutes?
 (186) A Yeah, if that.
 (187) Q Did you then go back and talk to Mr. Barnett and Mrs. Clinton?
 (188) A No. I just think I did whatever else I was

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(189) doing.
 (190) Q You didn't arrange for Mr. Barnett to come over on that Tuesday; correct?
 (191) A I may have cleared him through.
 (192) Q You didn't ask him to come over?
 (193) A Huh-uh.
 (194) Q You didn't call him on the Monday, did you?
 (195) A I may have talked to them on Monday. I don't remember it. But I don't remember calling him on Tuesday. But I may have cleared him in.
 (196) Q Well, you had the box in the residence. Did you call on Monday morning to get the box picked up?
 (197) A I didn't think about that box until I saw Bob Barnett.
 (198) Q On Tuesday?
 (199) A On Tuesday. Although I may have saw -- I saw Bob Barnett at the funeral.
 (200) Q On Friday?
 (201) A Right.
 (202) Q Did he raise with you the question of this box of documents?

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(203) A I know we said something about it. I know we did.
 (204) Q At the funeral?
 (205) A Yeah -- well, actually I remember sitting with him in the airport.
 (206) Q And what was the discussion?
 (207) A Oh, I -- I don't know what it was. Either I said, you know, I'll get that box to you, those documents over, and he said don't worry about it, when you do, you do, or something like that.
 (208) Q Did he call you on Monday to ask you whether he could help you get the documents over?
 (209) A No.
 (210) Q Did he call you on Tuesday to ask whether

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

WEDNESDAY, DECEMBER 13, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 10:30 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order. I want to apologize for starting later than anticipated. Before we call the witnesses, let me say that last evening—and that's why we were late because I was just reviewing—last evening the Committee received memorandums of law from Williams & Connolly, I believe from Mr. Kendall on behalf of the President and Mrs. Clinton and a communique from the White House and from the White House Counsel's Office from Jane Sherburne, along with a submission of the White House Counsel's response to our request to our subpoena for William Kennedy's notes as it related to the November 5 meeting that we believe concerned Whitewater and I think there's some testimony to that effect.

Needless to say, I was not unaware and can't say in good conscience that I didn't anticipate this response, but nonetheless, I believe the Members of this Committee and I are still disappointed by the response. In denying the Committee the notes of the meeting of November 5 in which Mr. Kennedy participated, I see that we really now have a situation that this Committee has attempted to avoid. I think the record amply demonstrates we have gone out of our way to avoid this kind of situation.

This is a serious matter, and I, notwithstanding the late hour in terms of this particular issue, getting down to that 11½ hour, so to speak, given the gravity of the matter, given what will undoubtedly take place, I would urge the President and Mrs. Clinton to reconsider. Certainly their counsels would reconsider because the American people do have a right to know, and this Committee has a responsibility to take it seriously.

With this in view, I have asked the Committee's counsel, Mr. Chertoff, to review these papers, and obviously he will do so with

Mr. Ben-Veniste. Mr. Ben-Veniste and Mr. Chertoff may or may not agree. I would suspect they will not agree. I'm asking them to review the legal memorandum that has come both from the White House Counsel's Office and from Williams & Connolly in terms of their personal representation of the Clintons.

The Committee will meet tomorrow to decide whether to order William Kennedy to comply with the subpoena for his notes, so we will review that memorandum. Barring any changes, factual or otherwise, I would suggest that this Senator, at the least, is ready to suggest that we move on an order compliance, but we'll take that up tomorrow. I don't think it would serve any purpose to go into extended debate as to the various merits. I think that the meeting of November 5, again, was not about a private citizen meeting with his personal attorneys, but we can spend some time arguing to that tomorrow. Undoubtedly, if we move ahead, that will be the nature of not only further debate, but eventually will be a matter that will be decided in the courts. We are disappointed.

I think it's wrong. I think it is a mistake. I think the American people have a right to know. I also want to announce further that four other subpoenas have failed to produce the documents that have been requested, and I'm going to ask Mr. Chertoff to explain to the Committee what those documents are. The White House has refused to make these documents available and has not even responded to the Committee's request, but I'm going to ask for an explanation.

We may thereafter consider or begin the process of whether or not we will seek enforcement of those subpoenas as it relates to those documents, again, giving to the White House and to its counsel an ample opportunity to explore options before I recommend the issuance of subpoenas and then moving to have them complied with.

So we will meet again tomorrow to decide with respect to the one subpoena, and I would expect a report and some amplification as it relates to that. I would hope that the White House would review these other four requests because we intend to get a response, but I want to give them ample opportunity. Failing a response which we feel is appropriate, we will consider whether to seek enforcement of those subpoenas.

Mr. Chertoff, would you just explain briefly those four areas of documents that have not come forth yet?

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Chairman, the Committee issued a subpoena in October of this year requesting all relevant White House documents that pertain to the subjects of this investigation. On November 2, the White House supplied us with a list of about 20 documents that they were withholding on the ground of either attorney-client or executive privilege.

We reviewed that list of, I believe, 22 documents and from that we culled out five documents in particular which we believed were both important and as to which we believed there was no privilege that was applicable on its face.

One of those documents was a set of the William Kennedy notes, which are the subject of the current subpoena and the current legal memorandum, but let me briefly describe the other four. There is

a January 5, 1994 letter regarding Whitewater and other matters to the President from James Hamilton, who the Committee will recall, Mr. Chairman, was the attorney who represented Mr. Foster, who had also done some work or been involved to some degree in some work with the campaign.

There is a copy of a December 20, 1993 New York Times article, which includes notation or notations made by the President.

There is an undated document authored by Joel Klein, who was Deputy White House Counsel, marked "notes re: Whitewater investment."

Finally, there is a November 10, 1993 document entitled "draft chronology re: Whitewater matters" authored by David Kendall.

I should make the observation to the Committee, Mr. Chairman, that that chronology is dated 5 days after the November 5 meeting, which is the subject of the current subpoena for Mr. Kennedy's notes.

The CHAIRMAN. Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, first let me observe that I think in separate submissions yesterday evening, both the White House and David Kendall, the President's private attorney, put forth very strong cases with respect to the November 5 lawyers meeting at Williams & Connolly as being covered by the attorney-client privilege. Those assertions of privilege appear to be grounded in well-established legal doctrines and they appear to be supported by decades of consistent judicial decisions. You said in your opening statement the Committee has attempted to avoid a confrontation. I must differ with that. I think the Committee has prompted a confrontation in this instance.

I think the Majority has taken an extreme position. I think the President, like all Americans, has the right to have confidential communications with his lawyer. It's a right I think all citizens enjoy, and if people stop and think about it for a minute, there are obvious good reasons for it.

To my knowledge, no Committee of Congress has ever in the past sought to intrude into the President's lawyer-client privilege, even in instances where Congress was pursuing instances of what looked like clearly to be actual abuses or wrongdoing. That's not present here. There's no evidence of actual wrongdoing in this situation, but in the past Congress has respected the President's right to have confidential communications with his attorney.

Now, this confrontation can of course be provoked at any time. I guess it's going to be provoked four times over on the basis of the statement Mr. Chertoff made. In fact, when we made our request to the White House, we indicated in the letter that we recognized there were privileges that could be invoked by the White House in terms of responding to our letter, so at the very outset when the requests were made, there was a recognition that some of the items asked for could, in fact, fall under a privilege.

The difficulty here is that, as I understand it, amongst other difficulties, this is a very complicated area of the law, that testimony on this particular meeting could lead to the argument that there has been a waiver which would enable the compelling of testimony

about all confidential communications by the Clintons with their lawyers on any subject discussed at the meeting. Now, that would be a far, far-reaching consequence, and it seems to me the Committee needs to be sensitive to that.

Now, in my view, the White House made a reasonable proposal last week in an effort to find a way for the Committee to have access to the information it legitimately needs without interfering with the Clintons' right to talk to their lawyers in confidence. That proposal was rejected unfortunately.

I note that Mr. Kendall, at the end of his submission on pages 38 and 39, outlines a process that could be followed, which in effect would enable the Committee to obtain information without provoking a confrontation, and without intruding into the legitimate lawyer-client privilege which the President, like anyone else, is entitled to.

Jane Sherburne, in her covering letter to us, indicates: "We remain willing to work with the Committee to find a way to provide information about this meeting reasonably necessary to the Committee's inquiry without unduly compromising the important principles we have described in the enclosed submission." Those principles are, of course, the ones related to the lawyer-client privilege.

The Committee can provoke this kind of confrontation obviously any time it wants. The White House, I think, has been very forthcoming in the material it has provided. It's made witnesses available for depositions. None of them have invoked any privilege in the course of doing that. We have had literally hundreds of witnesses before us, many of them from the Administration. We have received extensive documents and we're now down, of course, to trying to get the material of this meeting that took place on the 5th of November, for which I think very strong arguments have been made in these submissions as to why those meetings are entitled to a lawyer-client privilege.

I think the Committee headed down an unfortunate path when it issued the subpoena to Mr. Kennedy, and I think it ought to stop and reconsider and consider carefully finding alternative ways of meeting its requirements without intruding upon the attorney-client privilege, which I think the President, like any other citizen, is entitled to.

Senator SHELBY. Mr. Chairman.

The CHAIRMAN. Senator Shelby and then Senator Bennett.

OPENING COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Mr. Chairman, this is quite troubling to me and I think to other people on the Committee, but probably more troubling, Mr. Chairman, to the American people. I wonder, and I am sure the American people wonder, what is it that the Administration doesn't want to come forth with? Why are they hiding this? Why are they hiding behind the idea of a privilege, a lawyer-client relationship, or perhaps executive privilege, although I don't know if that term has actually been used yet?

What we are charged with by the Senate is investigating, as an investigating Committee, to get to the truth of the matter of what went on in the failure of this thrift in Arkansas and other things connected with it. Why wouldn't the President of the United States

say look, I have nothing to hide. Those notes were taken, for example, at this meeting by an attorney working for the Government, for the White House, not for me personally, although there were some private attorneys there?

I believe it would serve the President well and this Administration well if they came forth and said we're not stonewalling anything, we're not hiding anything, we're going to share whatever the Committee wants in this case because as long as they stonewall this, there are going to be other questions raised by the public, by the media, and it's not going to serve this Administration well.

Now, even in one of the leading papers today, there was a quote on President Clinton. This was in The Washington Post today. It said, quoting him, "My interest is to get the facts out," speaking of this investigation, "so it's hard for me to imagine a circumstance, a circumstance in which that would be an appropriate thing for me to do," in other words, to exert privilege in any way. That was in March 1994 when he was asked if he, the President, would ever claim executive or attorney-client privilege on Whitewater matters.

I hope that he won't. I hope that he will reconsider this and perhaps listen to himself and not to somebody saying look, you have a right to assert the lawyer-client relationship, but does he under these circumstances?

What about these attorneys at the White House, were they working? For example, Mr. Nussbaum, Mr. Kennedy and whoever else—Mr. Lindsey was there, I'm not sure if he's an attorney, maybe he is—were they working in November 1993 when this meeting took place, were they working for the President of the United States or were they working for the American people? If they were working for the American people, I don't see how you can claim an attorney-client privilege.

It's deeply troubling, Mr. Chairman.

The CHAIRMAN. Senator Boxer.

OPENING COMMENTS OF SENATOR BARBARA BOXER

Senator BOXER. Thank you, Mr. Chairman.

I hope, for the good of this Special Committee, that we can work this out. I think we have a path we could follow, Mr. Chairman, if you so decide and if we can work together, pretty much outlined as a first step, I think, very clearly by Williams & Connolly when they say the present conflict is wholly unnecessary because the Special Committee has available to it the means to obtain the information it legitimately seeks without invading the attorney-client privilege. They lay out how they would cooperate in answering all the questions that might be asked.

If we read these pages of this document, starting on page 38 and reading just about three pages, and I won't go into it at this time, I think what they have laid out is a road map for us to at least avert this crisis now and then. After the Committee has had the chance of both counsel to ask their questions, if anyone still feels that there's more information that we need to get, we can look at it at that point.

Mr. Chairman, I have to say, if this Committee decides by majority vote that we're going to go down the path where a President gives up private rights that an ordinary citizen should have, then

I assume we believe Senators and Members of Congress don't have those rights, either.

Then, I would say to my friends that Senators ought to think about that, because whether it's a lawyer's notes from a business lawsuit or a lawyer's notes from a divorce settlement or a lawyer's notes from a child custody fight or a lawyer's notes even from an Ethics Committee proceeding or any other type of proceeding that any Member could be involved in, I think it would put Senators and Members of Congress in a difficult position to claim that we have any rights whatsoever.

I think we have a road map here, Mr. Chairman, and I urge that we work together in a bipartisan way. We have done that so far. I think that our Ranking Member has shown his desire to cooperate. I hope we can avoid this because I think you're entering a very slippery slope where we begin to see that rights that are really accorded to all of our citizens will be eroded and we will be affected. Frankly, every single American is affected when we go down that slope.

So let's try a way to avoid this. If we have to come to this, I think we always can come back to it, but I hope we can follow this suggestion. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Murkowski and then Senator Bennett.

Senator MURKOWSKI. Go ahead.

The CHAIRMAN. Senator Bennett.

OPENING COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Thank you, Mr. Chairman.

I agree completely with the Ranking Member and with my friend from California that we should not do anything to deprive the President or any American of his or her legitimate attorney-client privilege rights. I am not an attorney, but I guess because I was the only one in town, I ended up on television discussing this over the weekend and made the point then which I want to make here, that attorney-client privilege does not apply to lawyers that are not your lawyers.

What I said over the weekend was that, if the President is going to insist that the Government lawyers who were present at that meeting are under some kind of privilege, he has to claim executive privilege, not attorney-client privilege. They are not his lawyers. They are prevented by law, as I understand it, from representing private clients when they are on the Government payroll. If they were at that meeting saying they were there as President Clinton's lawyers, they would be violating the law. They were there as Government lawyers, part of the Office of Counsel to the President.

So if they're going to claim privilege, they're going to claim privilege as executive privilege, not as attorney-client privilege. I think that's something we need to make very clear here.

As I said at the beginning of my statement, I agree with Senator Sarbanes, I agree with Senator Boxer, the President is entitled to attorney-client privilege when he's dealing with his private attorneys who are paid by him and hired by him to represent him in private matters, and we should do absolutely nothing to intrude on that right, but the notes of the lawyer who is clearly not his attorney, who is clearly paid by and responsible to the Government, can-

not under any circumstance fall under the attorney-client cloak or we end up with a circumstance where the President says—I'm not saying this President is asserting this, but this is the ultimate end of that road—the President says any lawyer who works for the Government in the Executive Branch is my lawyer and therefore covered by attorney-client privilege. We have to recognize the difference between executive privilege and attorney-client privilege and what we are seeing here now asserted is executive privilege.

If I may quote, Mr. Chairman, from this morning's New York Times, it says:

Invoking executive privilege for the first time on Whitewater, the White House today defended President Clinton's decision to defy Senate subpoenas with a brief that relied in part on legal arguments put forward during Watergate by President Richard M. Nixon and during the Iran-Contra scandal by former Members of the Reagan Administration.

Then, going down a paragraph, it says:

Executive privilege protects the confidentiality of communications involving the lawful duties of the President. In asserting the privilege, the White House relied on two court opinions involving when that privilege was invoked, ultimately unsuccessfully by Mr. Nixon's lawyers.

In this morning's Washington Post, in the same article that our colleague from Alabama quoted, I find the following on this same issue of executive privilege, and I quote:

Some legal experts said yesterday that the Clintons' practice of having Government lawyers do their private legal work could make it difficult to assert the attorney-client privilege. Further, several experts said, if White House officials obtained confidential Government investigative information improperly or inadvertently, it should not have been given to private attorneys representing potential defendants. Government lawyers really can't act as private lawyers, said former Bush Administration Attorney General William Barr.

'A Government lawyer has only one master, that is the Government,' he said. 'They cannot assert that privilege against the Government itself whom they serve. What's really being asserted here is executive privilege but they're afraid to use the word.' He referred to the White House claim that the meeting was to divvy up responsibilities, and if those discussions can't remain confidential the Counsel's Office can't do its job. 'No one could be a stronger proponent of Presidential power but they simply don't have a leg to stand on,' he said.

I think it is very important that we understand there is a difference between executive privilege and attorney-client privilege. I will defend to my last breath the right of the President to maintain his attorney-client privilege, but I submit that the invoking of executive privilege in this circumstance is inappropriate for the President, and I would hope in all of our discussions we would not try to blur the distinction and take the executive privilege under the sacred umbrella of attorney-client privilege and pretend it's the same thing.

Senator SIMON. Mr. Chairman.

The CHAIRMAN. I'm going to rotate. I will go to Senator Simon and then to Senator Murkowski. Senator Simon, yes.

Senator SARBANES. Senator Simon, would you yield to me?

Senator SIMON. I would yield to my colleague.

Senator SARBANES. First of all, I want to point out that both of the memoranda submitted to us discuss in great detail the very point that Senator Bennett has touched upon, and in my view make a very strong case as to why the lawyer-client privilege would apply to all of those who participated in the meeting of No-

vember 5. Now, they recognize the issues that you raised and they have addressed them directly.

Second, I just make this observation to you. One of the subpoenas that was made reference to by Mr. Chertoff earlier, that, I take it, will also be up before us tomorrow is to support a request made with respect to a draft chronology concerning Whitewater matters prepared by David Kendall. I think I'm correct. Is that not one of the items that was put up on the machine?

Mr. CHERTOFF. That's correct, Mr. Chairman. It is a draft chronology with no indication from the White House as to whom it was circulated, whether it was confined to the President and Mr. Kendall, whether it went to other lawyers, whether it went to the Press Office, and that's exactly the kind of information we would need to make a determination about whether privilege would apply.

Senator SARBANES. I just want to make the point that in terms of intruding into the privilege, we're now talking about a memorandum prepared by the President's private lawyer, and that's one of the additional four items which the Majority intends to pursue. I just make that point to underscore how prepared I think the Majority has been to intrude into the lawyer-client privilege.

The CHAIRMAN. I was not prepared to go into the detailed analysis of the replies. That's one of the reasons I suggested, and it was the Chairman's intent and it will be, that we move into this matter and have our counsel review the two memoranda that we received last evening. It was an attempt to give the White House an additional opportunity. It would be my hope that they would not pursue this because it is my inclination at this time not to take a detour, a further detour, but to move ahead, absent some compelling reasons, or facts that we're not aware of, to move on the issue of compliance. There is a procedure for that.

In order not to be unfair, I did not think that it would be fair to either the Majority or the Minority, particularly the Minority because I do have a particular feeling on this, having gone down this road now, that we would go forward, but I didn't want to have a situation where it was said well, the memorandum came in last evening and shouldn't you review this carefully. That's why I'm asking counsel to review it carefully and tomorrow to have whatever arguments or thoughts the various Members would want to make with respect to this particular area.

Senator Simon and then Senator Murkowski.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Mr. Chairman, I have not read the memoranda that we have received. I think Senator Bennett accurately says this is somewhat of a blurred situation. Blurring it further is the fact that at least one of the lawyers that I assume you refer to was an attorney for Bill Clinton before he became President of the United States.

I would add, I think we're headed toward a legal confrontation on this issue. Whether it's lawyer-client or executive privilege, my recollection from 21 years here is that, with the exception of Richard Nixon, the President always wins these confrontations with Congress, so that I think we would be wise to follow the advice of

my colleague from California to see if there are not practical ways of working this out so we avoid the legal confrontation.

I've just been reading over again what the White House offered in terms of this meeting, and I think it's significant. Among their offerings:

No objection has been raised to the Committee asking the White House personnel who attended the November 5 meeting what they knew when they went into the meeting.

Second, no objection has been raised to the Committee assuming that the White House personnel communicated everything they knew to Kendall and Engstrom at the meeting.

Three, no objection has been raised to the Committee inquiring into the purpose of the meeting and confirming that the White House personnel were not tasked, directly or indirectly, with obtaining nonpublic governmental information from outside the White House.

Finally, and I think this is very significant:

Four, no objection has been raised to the Committee questioning the White House personnel about what they did after the meeting.

There really is a pretty broad gate that has been opened to us that I think we can pursue, and I hope we would see if we can't reach some accommodation with the White House and pursue what we can rather than have a confrontation where ultimately lawyer-client privilege or executive privilege will be asserted and we'll get nowhere. I thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.
Senator Murkowski.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Thank you, Mr. Chairman.

I'm sure that as we reflect on the obligation of the Committee, and it's already been brought out here, why isn't the White House forthcoming, they must have something to hide. Clearly we can see beyond that and recognize the legitimacy of attorney-client relationship, and of course that's the principle under which they are basically making their case, but I would like to amplify a little more on the comments that have been made, particularly by Senator Bennett. This is clearly a different set of circumstances. The reason it's different is we have lawyers who clearly are Government lawyers and, as a consequence, this Committee is going to have to relate on whether or not it's appropriate that they basically serve two masters.

Now, we've noted here that in the different structure of client-lawyer relationship, the question of doing private legal work by Government lawyers is really the question from the standpoint of appropriateness that this Committee is going to have to address.

I, myself, personally feel that it's difficult, if not impossible, to assert beyond a reasonable doubt that there is solely an appropriate attorney-client privilege here when, as noted in USA Today in an article by Mr. Yost, "After the 2-hour Whitewater meeting in November, three Government-paid lawyers from the White House Counsel's Office were in the meeting along with the Senior Presidential Adviser, Bruce Lindsey."

I think our friends, Senator Simon and Senator Boxer, have related that there may be another way to do this, but that's pretty much left up to the White House, if they want to show a coopera-

tive commitment. Otherwise, to claim simply lawyer-client privilege when clearly, beyond a reasonable doubt, these Government lawyers were acting in a private capacity to the President, therefore, I feel very comfortable in pursuing the request that is undoubtedly going to be before us tomorrow relative to challenging this as an adequate defense for the reluctance of the White House to provide the information that the Committee has requested in the subpoena.

I think as we reflect on this lawyer-client privilege defense, we have to recognize that clearly there is a difference in this case. As we address precedent, it should be addressed in the spirit of recognition that these lawyers were Government lawyers and to serve two masters without communicating in a manner in which this Committee has an obligation to proceed, the information that the Committee has requested under subpoena is clearly inappropriate.

So I think I would certainly agree with Senator Bennett that they want to defend the lawyer-client privilege as it exists, but in reality, it doesn't exist in the sense of the relationship between the Government lawyers in the White House and the Whitewater matter, nor the subpoena requested by the Committee. So I think, Mr. Chairman, you're quite responsive, and I intend to support it.

The CHAIRMAN. I'm going to ask at this time that the witnesses stand for the purposes of taking the oath.

Senator DODD. Mr. Chairman, maybe you want to do that first. I would like to be heard.

The CHAIRMAN. I'll swear them in, then return to you, Senator.

[Whereupon, Sylvia M. Mathews and C. William Burton were called as witnesses and, having first been duly sworn, were examined and testified as follows:]

The CHAIRMAN. Senator Dodd.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Thank you, Mr. Chairman.

I know a lot of this has been gone over here this morning so I just won't take much time with it, but I would hope, Mr. Chairman—and I gather you feel this way as well so I'm not stating anything that I think you disagree with—that we ought to be really going to, I think, extraordinary steps here to try to find some way to resolve the issue of the subpoenas.

The CHAIRMAN. If I could just, with your indulgence, with my colleague's indulgence, say that is the reason that I did not push forward today, because in fairness to everyone, I have not had an opportunity to review the memoranda, I have just seen it shortly. The memorandum from both attorneys has arrived. I don't know whether it's going to wind up in our changing our position at this point in time, but until we take an action, we have it, so the door is open.

Senator DODD. I appreciate that. Again, the Chairman may have made this point as well before I walked into the room, but I think all of us on this Committee would certainly agree that what we have seen from the Administration over these many months now is a very, very high degree of cooperation in terms of access to documents and information, particularly for Members here who go back and recall times when every step was literally a major confrontation to get anything at all.

Now, I know Members here are not satisfied with it. I mean, they have heard, but I think we all recognize the fact that we've had an Administration that has literally turned over thousands and thousands of documents and information that have been requested. I think it's important to keep that spirit in mind. We're not talking about a situation where we literally had to go through legal haggling every step of the way.

So when we come to this particular point, one that can be somewhat esoteric, it doesn't lend itself obviously to a public/political exercise where people invoke a privilege and a right that is extended to all Americans. The notion of attorney-client relationships would not be an issue if we were talking about Mr. Clinton as opposed to President Clinton.

As I gather, there's been an offer proposed that would certainly allow the Committee to ask personnel what they knew about official Government information when they went to the meeting and what they did after the meeting, which seems to me might satisfy our needs as an investigative Committee and yet simultaneously preserve, I think, a right that all of us certainly wholeheartedly support and endorse, and that is the right of people to be able to have privileged communications between themselves and their attorneys.

As I say, while it may not seem important right now, we may be setting a precedent that, while it may satisfy people at this particular juncture in this particular fact situation, it's one that obviously, if it's been so rarely invoked and challenged, will come back.

So I would again urge what the Chairman is doing here to see if there isn't some way to reach an accommodation. Reaching that point, I think all will agree, whether or not they are satisfied with their response, we have had a tremendously cooperative Administration in terms of the information that we have sought to have in order to do our business here, and I don't think we ought to forget that as we go forward, that that is the spirit. The objections I think are on a legitimate level and deserve to be treated as such rather than dilatory or as an effort to try to sidetrack the Committee.

Mr. Chairman, I applaud what you're trying to do here and hopefully it will succeed in these next few hours so we can afford that.

Senator SARBANES. Mr. Chairman, could I ask my colleagues on the Republican side to review carefully overnight the last few pages of the Kendall memo where he sets out a procedure and makes the observation that "this process could very well provide the Special Committee with the information it needs, while at the same time preserving the privilege and avoiding a constitutional confrontation." Then, he concludes by saying "that plainly is the wisest course. We urge the Committee to consider this approach seriously before demanding an intrusion into this protected relationship."

They have spelled out in great detail a course I think the Committee could follow and which seems to me to make a great deal of sense.

The CHAIRMAN. Senator, that is one of the reasons, as I stated earlier, the fact that we did get this memorandum, the fact that I want a careful review by counsel, notwithstanding what I think would be a fairly strong viewpoint that has been expressed by a number of our colleagues, that the raising of the attorney-client

privilege would not seem to be one that would pass muster or the test of what legal authorities have indicated would be protected.

Nonetheless, this is important and it deserves every opportunity both for legal scrutiny and for political consultation between all sides and that's why I intended to put this matter over, recognizing that obviously there would be some discussion, as there has been today, with respect to this.

Senator Grams and then I'm going to go to the witnesses.

OPENING COMMENTS OF SENATOR ROD GRAMS

Senator GRAMS. I'll be short. I would comment that if we had had a tremendously cooperative Administration up to this point, it apparently maybe has ended now by this statement from the White House, but I think the doors that have been said to be opening and getting the information we might need, as outlined in the memorandum from Mr. Kendall, still dances around the central issue of the items in the concern of the subpoena. In other words, it's saying we'll give you everything except for what you're asking for. I think we're dancing around the question.

I think if we go to the President and if he's claiming attorney-client privilege, you just ask a simple question, who is paying the bill. Is the President paying the bill for Mr. Kennedy to be in this meeting? No, if the taxpayers are, the taxpayers are the client, not Mr. Clinton. If this is a way of the President trying to shift his bills to the taxpayer, I think he then is eliminating the attorney-client privilege.

So if the taxpayers are paying Mr. Kennedy's bill, they are his client and not the President.

Senator DODD. If my colleague would yield on this point, just to make the analogy, we've had Senators whose staffs or attorneys are paid for by taxpayers where they have privileged communications, because of the public nature of their position, and if we're going to use that standard here you're going to find a whole bunch of people in a public position who are required to meet the same standard. We have never done that before. I warn my colleagues here, it isn't just the President you're talking about. When the office is required to respond, it's not just a private citizen responding, it's a very public person responding, as are Senators.

Senator GRAMS. I understand if it's something I've done as a private citizen, I would have that, but if it's in an official capacity in talking with an attorney, that might be invoked.

Senator SARBANES. But those two things intersect, your public and private capacities, in many instances.

Senator MURKOWSKI. I would remind—

Senator SARBANES. That's particularly true with respect to the President, but it's true also with respect to Members.

Senator DODD. Yes.

The CHAIRMAN. I'm going to say because my colleagues have conducted themselves in such an outstanding way, I have permitted this cross back and forth. We have kept this at a level of really the kind of inquiry and raising of questions that are thoughtful and put correctly, but I want to try to limit that because I know we then get carried away.

Senator Faircloth, you have a question, I understand?

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Yes, Mr. Chairman, and in that same spirit, I ask this question. I would like to direct this question to the Committee counsel. If criminal acts such as obstruction of justice were discussed at this meeting, would these notes continue to be privileged? I'll ask either counsel that would like to answer it.

Mr. CHERTOFF. Mr. Chairman, I can answer by saying there is an exception—there are several exceptions in the law of attorney-client privilege, even where there is a privilege, which for the sake of this question, I will assume there is. One of those exceptions is one in which there is a reasonable basis to believe that there may have been discussion of illegal activity or perhaps even unauthorized activity or improper activity during the meeting itself that has been held, in some instances, to essentially waive or destroy the attorney-client privilege. Those discussions then become subject to subpoena and inquiry.

Mr. BEN-VENISTE. Yes, I would be pleased to respond to Senator Faircloth. I think the law is this, before we get off on hypothetical possibilities that have no grounding in fact here and there is no evidence that has been presented to this Committee that there has been any impropriety, much less illegality, coming out at the other end of this conversation. No suggestion has been made and we have explored the issues of what was done with public documents, the SBA documents and the like. We've had complete testimony with respect to that, not only from the SBA but also from the Department of Justice officials who reviewed the matter contemporaneously.

Now, my understanding is that with respect to the point Senator Faircloth made, the Supreme Court in 1992 in a case called *United States v. Zolan* required that in order to pierce an attorney-client privilege for the reasons that you postulate, Senator Faircloth, there must be a *prima facie* showing made to the court in camera to support the notion that illegal activities were discussed or proposed at the meeting. We have no such basis on the basis of the evidence here, sir.

The CHAIRMAN. I'm going to ask Ms. Mathews, do you have a statement that you would like to make?

SWORN TESTIMONY OF SYLVIA M. MATHEWS CHIEF OF STAFF, U.S. DEPARTMENT OF THE TREASURY

Ms. MATHEWS. No, sir, I appeared before the Committee in July and I am here today to answer any further questions.

The CHAIRMAN. Excuse me, I'm sorry, Senator Moseley-Braun.

OPENING COMMENTS OF SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman. I didn't want to lose the opportunity to respond. After the debating colloquy that took place a moment ago and Senator Grams' comments, I really thought it was important to respond to part of what he had to say. That is, Senator, the taxpayers are also citizens, and a person remains a citizen, a citizen is still a citizen even when that person becomes a public servant.

The President of the United States is of course the ultimate public servant, but he is still a citizen. All of us, it seems that every

single person, whether we serve in elective office or not, have to be very vigilant to maintain that the rights that this Constitution gives to citizens are maintained in all cases and without regard to who it applies to.

Now, the Fifth Amendment, like the First Amendment, the issues of attorney-client privilege, these rights, these constitutional rights, are probably more important when used in hard cases than they are when used in the easy case. The easy case would be a citizen in a divorce proceeding. You would say, of course, these documents are privileged and the lawyer-client confidentiality should not be breached. That's the easy case.

When it's the President of the United States, the ultimate public servant, that's a hard case, and we have an expression from school that hard cases make bad law. It's those hard cases where we have to be especially vigilant that we don't undermine our Constitution. There are those of us and Americans out here who believe that through this whole matter, there's been no "there" there in Whitewater, that it's all political and it's just a bunch of noise.

There are other people out there who believe this is a nefarious scheme that goes to the core of governmental corruption, but whatever you believe, either way, our Constitution should not be treated lightly here, and we should be vigilant and be careful, as we take it in debate, to remember that citizenship is something that's at stake here and whether or not those constitutional protections will apply in the hard cases is what's at stake here. If we can work through these issues civilly, if we can work through these issues by reaching consensus on the exchange of information, then that's the course that we ought to pursue instead of forcing a constitutional crisis to achieve a political end.

Senator GRAMS. Mr. Chairman, I wasn't questioning the President's rights, but under this scenario, I don't think he has the right of attorney-client privilege is all I said. I'm not saying that average citizens don't, and the President is a citizen and has those rights, but in this case I think he is invoking a faulty argument. That's all I said.

The CHAIRMAN. Thank you, Senator. And thank you, Senator.

Let me say, I think we have had a very thorough examination of the various positions, and I think very reasonably put forth by both sides. I want to say that. Certainly, in the public's mind, this is not a matter that is easily decided. These are issues that attorneys can differ on, so we are going to explore very carefully. I'm asking counsel to review the memoranda, and to see if there is any opportunity to get the information that the Committee feels is necessary and do it in a manner which will not create a waiver of people's rights. If they wish to assert, we would certainly be pleased to go forward in that manner.

If we can't, that's another matter, and we'll consider that again tomorrow.

I thank all my colleagues as it relates to the manner in which we've conducted this. This is not easy and we understand that.

Let me turn at this point to Mr. Chertoff.

Mr. Burton, excuse me. Mr. Burton, do you have any statement that you would like to make to the Committee before we start?

**SWORN TESTIMONY OF C. WILLIAM BURTON
FORMER POLICY AND STAFF DIRECTOR FOR
THE CHIEF OF STAFF TO THE PRESIDENT**

Mr. BURTON. Mr. Chairman, my name is Bill Burton. At the time in question of the matters the Committee is looking into, I was Policy and Staff Director for then Chief of Staff Mack McLarty in the White House. Since that time, I moved back to Austin, Texas with my family where I practice law.

I was before the Committee before and as I told the Committee then, I will be happy to answer any questions honestly and completely, and I have no prepared statement.

The CHAIRMAN. Thank you, Mr. Burton.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Burton, do you recognize the number 202-628-7087?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. How do you recognize that number?

Mr. BURTON. Shortly before the hearing started, I was given some papers by one of the Committee staff members and the number is that so-called mystery number that has been in question in front of this panel, and that's where I saw the number for the first time.

Mr. CHERTOFF. All right. Before you came to this hearing and saw the number, when you were serving in the Office of the Chief of Staff of the White House, were you familiar with an auxiliary number outside of the regular switchboard that had the 628-7087 designation?

Mr. BURTON. I can remember having an auxiliary number that, for example, Mr. McLarty used to get into the White House when the main switchboard was busy, which it often was, particularly early in the Administration. I do not remember what that number was. It was kept on a card and I just—I do not remember what that number was.

Mr. CHERTOFF. So Mr. McLarty had a card which gave him an auxiliary number that he could use if the switchboard was busy?

Mr. BURTON. When I say "a card," it was a Rolodex card. I had a Rolodex card with the auxiliary number on it so that when Mr. McLarty would occasionally call and say what's the backup switchboard number, I would—

Mr. CHERTOFF. So you had the card?

Mr. BURTON. I had a card with that backup number we received from the White House on it.

Mr. CHERTOFF. So there was a record somewhere in the White House, as common sense would suggest there would have been, of what the auxiliary number was that allows you to get in if the switchboard is busy?

Mr. BURTON. I assume that's the case. I'm not sure there was a singular auxiliary number. I'm not sure if there may have been others.

Mr. CHERTOFF. This is really a simple point. You don't need to struggle with it. It's just common sense. There are apparently numbers at the White House that allow people to bypass the switchboard; right?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. You know that from your own experience because you knew you had one number?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. Now, somewhere in the White House someone has those numbers?

Mr. BURTON. I assume that is the case, yes, sir.

Mr. CHERTOFF. You know it to be the case because you had the number when you were in the White House?

Mr. BURTON. That's correct.

Mr. CHERTOFF. The reason I ask this is because it took an inordinate amount of time to identify this number, for the White House to identify this to us. We couldn't get it from the phone company. It took 8 days of research before the White House came back to us with this number, and I was curious as to how it was possible that an institution wouldn't have a record of its own telephone numbers.

Can you shed any light, have you ever heard of this phenomenon when you were at the White House?

Mr. BURTON. I will tell you, the White House telephone system is a very complicated system, and I could not tell you anyone at the White House who could explain everything from the secure numbers through the regular switchboard to the cellular phone system.

Having said that, I had nothing to do with the search for this number so I don't know the process the White House used.

Mr. CHERTOFF. I understand. But we have established, at least, you will agree that with respect to one such number, when you were in the White House you actually had a card that told you the number you could use to get past the switchboard?

Mr. BURTON. That's correct.

Mr. CHERTOFF. Now, let me ask you about the night of the 20th. You were in Mr. McLarty's office?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. You were there during what period of time?

Mr. BURTON. I was there through most of the day. I was there shortly before the Larry King show started that the President was appearing live on that night. After I took the call from David Watkins explaining that the Park Police had found a body, tentatively identified as Mr. Foster's body, out at Fort Marcy Park, I left the Chief of Staff's Office, went to the residence to advise Mr. McLarty, and returned to the Chief of Staff's Office during that approximately 30 or 45 minutes of the show before we got a positive identification on the body which was shortly before the end of Larry King's show, maybe around 10 p.m.

I went back to the residence, advised Mr. McLarty of that fact and went with him to see the President in the residence part of the White House. I returned to the Chief of Staff's Office where, to the best of my knowledge, I remained most of the rest of the evening until I went home in the early to midmorning—I mean, early pre-dawn hours, maybe somewhere between 2 in the morning and 4 in the morning.

Mr. CHERTOFF. The President stopped taping the show or the show stopped at about 10 p.m.; correct?

Mr. BURTON. That's correct.

Mr. CHERTOFF. You were up there when Mr. McLarty spoke to the President after the show?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. Did you know that the President called the First Lady?

Mr. BURTON. I found out later that he had called the First Lady.

Mr. CHERTOFF. Then, at some time after 10 p.m. you returned to the Chief of Staff's Office?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. You understood that Mr. McLarty and the President were going to go to the Foster family, to the residence?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. Mr. McLarty told you that?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. Now, we have received a letter from the White House indicating that you recall that at what would have been 11:41 Eastern time and what was 10:41 Little Rock time, you had a conversation with the First Lady.

Mr. BURTON. I recall having a conversation with the First Lady that night. I did not remember the time. The time you just described is not inconsistent with what I remember.

Mr. CHERTOFF. Now, when did you first recall having this conversation?

Mr. BURTON. I've always known I've had that conversation.

Mr. CHERTOFF. How did you come to have that conversation?

Mr. BURTON. I was in Mr. McLarty's private office most of the evening, and at some point that night I received a call from the First Lady. I don't remember if I answered the phone or if Ms. Mathews answered the phone and transferred the call in to me or if someone else answered the phone and transferred the call in to me. I don't remember who answered the phone.

It was the First Lady, and we had a personal conversation about Mr. Foster's death. It lasted about 10 or 15 minutes to the best of my recollection.

Mr. CHERTOFF. Now, was the First Lady looking for you?

Mr. BURTON. That's my recollection.

Mr. CHERTOFF. So you pick up the phone and the First Lady says what?

Mr. BURTON. I do not remember the precise words used during the conversation. I do remember the call quite well and remember the general areas we discussed.

Mr. CHERTOFF. All right. Now, you remember the call quite well, so the first thing I want to ascertain is you were the person she was looking for?

Mr. BURTON. That is my recollection, yes, sir.

Mr. CHERTOFF. She wasn't looking for somebody else?

Mr. BURTON. My recollection is she was calling me.

Mr. CHERTOFF. Did she say why—and I will put this in context for you, because she made very few calls that evening, and as she described it in her affidavit, she called some of her closest friends and colleagues. She called Maggie Williams and Harry Thomasson, she spent 20 minutes on the phone with Susan Thomases and then immediately hung up and within a moment called the mystery

number, had a 10-minute conversation, then called Carolyn Huber, a very old friend from Arkansas, and then called her brother.

Now, in the midst of these calls to these very, very close people, there's a call to what you have now told us is to you for 10 minutes. Are you a very close friend of the First Lady?

Mr. BURTON. I consider myself a friend of the First Lady. I don't know that you would go so far as to say a close personal friend. I used to work with the First Lady. I knew Governor Clinton in the mid-1970's.

Mr. CHERTOFF. Did you socialize with the Clintons during the period of time you were in the White House?

Mr. BURTON. I attended some events, some big events and small events.

Mr. CHERTOFF. Did you ever eat dinner privately with the Clintons?

Mr. BURTON. No, sir.

Mr. CHERTOFF. So, in the midst of calling very dear, close, long-time friends, your testimony is the First Lady picks up the phone and asks to talk to you?

Mr. BURTON. That's right. This may help to put it in context. Mr. McLarty had taken me up to the residence when he was going to notify the President about the death of Mr. Foster, the suicide of Mr. Foster because I had talked to the Park Police and was the point person in the White House at that time who knew about that and who knew the details in the event the President wanted more details about the suicide.

Mr. McLarty later advised me that he had notified the First Lady. He said I told her you had talked to the Park Police. If my recollection serves me right, he may have mentioned she may call you to talk about that.

Mr. CHERTOFF. When did Mr. McLarty say to you that he had spoken to the First Lady and advised her that you had spoken to the Park Police and then told you she might be calling, when was that?

Mr. BURTON. I first learned he had talked to the First Lady when I went back to the residence before the Larry King show ended, but after we had, we confirmed that the body found at Fort Marcy Park was, in fact, that of Mr. Foster. I subsequently talked to Mr. McLarty and he told me at that time, when I went back to the residence, that he had advised Mrs. Clinton of the death, mentioned that, at that point, it was a tentative identification on the body.

I don't remember if he told me then or if it was subsequently when we had talked when he was over at the residence that he said she is at her mother's in Little Rock and may be calling you, but I will put it this way, the call from Mrs. Clinton didn't come out of the blue.

Mr. CHERTOFF. I want to still track this through now.

Mr. BURTON. I see.

Mr. CHERTOFF. Your testimony is you go back a second time to the residence after you have gotten confirmation that it is in fact Mr. Foster's body. At that time, you say Mr. McLarty says the First Lady may be calling you.

Mr. BURTON. I don't remember if it was then when he said—I knew at that point he told me he had notified the First Lady. It

was about that time I remember specifically he said why don't you go up with me when we tell the President in case he has questions about details. I remember a similar conversation with him about the First Lady. I don't remember if it was then or if it was later when he was at the residence when he said that.

Mr. CHERTOFF. These details are important.

Mr. BURTON. I understand.

Mr. CHERTOFF. You went to the residence twice, right?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. The first time you went was early during the show to indicate a body had been found; right?

Mr. BURTON. Actually, it may have even been shortly before the show went on the air, but I think it was about the time the show was going on the air.

Mr. CHERTOFF. That's when you first told Mr. McLarty that there was a body that was tentatively going to be identified as Mr. Foster; correct?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. Now, at that point, you will agree with me, he had not spoken to the First Lady about Mr. Foster's death?

Mr. BURTON. That's correct.

Mr. CHERTOFF. So we can exclude the first visit as the occasion that he said the First Lady is going to call you; correct?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. Then you go back and get further information, right?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. Then you go back to the residence and see Mr. McLarty again, right?

Mr. BURTON. That's correct.

Mr. CHERTOFF. At that point, Mr. McLarty says to you that he has spoken to the First Lady, right?

Mr. BURTON. Yes.

Mr. CHERTOFF. Now, at that point, does he say she is going to call you?

Mr. BURTON. I don't recall.

Mr. CHERTOFF. He does say to you at that point I would like you to stick around, we are going to go and see the President, right?

Mr. BURTON. To be fair about it, he was pretty gray about this whole matter. He didn't say I am going to stick around—I know you are paraphrasing there——

Mr. CHERTOFF. He wants you to stay.

Mr. BURTON. He said I want you to accompany me upstairs with the President as we advise him about this in case he has more questions about his friend's death.

Mr. CHERTOFF. So you do that?

Mr. BURTON. That's correct.

Mr. CHERTOFF. You actually spoke to the President?

Mr. BURTON. I did.

Mr. CHERTOFF. You told the President whatever you knew?

Mr. BURTON. Basically. I didn't tell him a lot of details. I told him a few details.

Mr. CHERTOFF. Whatever he was told, you told him?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. You didn't withhold information from him?

Mr. BURTON. No, sir.

Mr. CHERTOFF. Then, you understood that he was going to place a call to the First Lady?

Mr. BURTON. I don't know when I learned that the President had called the First Lady. I don't remember if that was then or if it was subsequently, when I had talked to Mr. McLarty when he was at the Foster residence, or if maybe it was in my phone call with the First Lady where she had mentioned she had talked to the President.

Mr. CHERTOFF. When did you have your call with Mr. McLarty at the Foster residence?

Mr. BURTON. I do not recall when that was. I do generally recall speaking to Mr. McLarty later in the evening after he and the President had left.

Mr. CHERTOFF. At the second time you are up at the residence when you finally ascertained it was Mr. Foster, is it your testimony at that point Mr. McLarty said the First Lady may be calling you?

Mr. BURTON. No, Mr. Chertoff, that's not my testimony.

Mr. CHERTOFF. When did he say it to you?

Mr. BURTON. He said it either on that trip or later when I spoke to him at the residence, if, in fact, he said it at all. I do generally remember him telling me that the call might be coming in the same sense he said the President may want more details about the death. I was the person who happened to have those details at the time.

Mr. CHERTOFF. Now, you pick up the phone and the First Lady is on the phone and says what to you?

Mr. BURTON. I don't remember her precise words to me. I remember generally what we talked about during the conversation.

Mr. CHERTOFF. You said you recalled this call pretty well.

Mr. BURTON. I do remember it pretty well.

Mr. CHERTOFF. What was her, not precise words, but as good as you can give it to us, what did she say to you when she got on the phone with you?

Mr. BURTON. The first topic we talked about was what we were doing to notify people in Arkansas about the death. I remember specifically going into some detail with her, explaining how we had notified Mr. Foster's widowed mother.

I think that was the primary concern. She knew at that point that Mr. Foster's widow had been notified because she had talked to the President and/or Mr. McLarty and knew somehow that they were over there, at the Foster home. What she had not been aware of was how Mr. Foster's mother had found out or if, in fact, she had and we discussed that matter.

Mr. CHERTOFF. Now, as of the time the First Lady called you, had you, in fact, been notified of that notification?

Mr. BURTON. Yes, sir. I think I testified previously that I remember that notification because it was, I think, a particularly tender one, a particularly dear one we had to be concerned about.

Mrs. Foster had lost her husband maybe the year prior to her son's suicide and was an elderly woman living in Hope alone in the Foster home. I wanted to absolutely make sure she didn't find out

by the radio or by television, and even—I didn't even want her to find out by telephone.

So I called George Frazier, who is an older man, a town father figure living in Hope, who had Mrs. Foster earlier in the evening and he and his wife had gone to get the preacher, Reverend Roark in Hope, and went to the Foster farm to notify her, I think, at approximately 11:30 or 11:40. I know by that point I had ascertained that Mr. Frazier and his wife had contacted the preacher and were going out there. I don't know if I had, by that point, again talked with Mr. Frazier after he had left the house, but it was comfortable in my mind that Mrs. Foster had been notified.

Mr. CHERTOFF. After you made that point to Mrs. Clinton, what was the next part of the conversation?

Mr. BURTON. The next part of the conversation was, she asked me generally what more details I had from the Park Police about the death. That was a topic I remember talking with her about, as I had talked with others about, other close friends and family—not family members but other close friends of the Fosters—about the details I had. I think people were shocked and grieved.

Mr. CHERTOFF. I want to focus on this conversation. What did you tell her?

Mr. BURTON. There's one thing I specifically remember about that, and I told her whatever it was I knew at the time. I happened to remember specifically talking to her about the placement of the gun in Mr. Foster's mouth. The reason I remember that is because it made me a little bit uncomfortable telling someone who was a close friend of Mr. Foster about that particular gruesome detail.

The reason I decided to tell her that was it was that fact that the Park Policeman, the major lieutenant, whichever one I had talked to had used to tell me, convince me it had in fact been a suicide, it was the fact he used to explain—let me tell you how I know it was a suicide.

Mr. CHERTOFF. Had you given this detail out to anybody else you spoke to?

Mr. BURTON. Yes, I had.

Mr. CHERTOFF. Who else?

Mr. BURTON. I remember talking to Al Graves, Jr., Albert Graves Jr., he's an attorney in Hope, Arkansas who was a childhood friend of Mr. Foster and he, like so many people, was in rather disbelief that a man we so admired and so looked up to like Mr. Foster could have killed himself. So I remember it was one of the details I shared with Mr. Graves.

Mr. CHERTOFF. When you had the conversation with Mrs. Clinton, who else was around?

Mr. BURTON. I don't know who was around on her end. I understood she was at her mother's.

Mr. CHERTOFF. No, who was around you?

Mr. BURTON. I think most of the time that I was on the phone talking to family and friends of the Fosters, I was in Mr. McLarty's office by myself.

Mr. CHERTOFF. You were by yourself?

Mr. BURTON. I was by myself in Mr. McLarty's inner office most of the time.

Mr. CHERTOFF. Was the door shut?

Mr. BURTON. I do believe the door was shut most of the evening.

Mr. CHERTOFF. Ms. Mathews, you were there during the evening; correct?

Ms. MATHEWS. Yes, sir.

Mr. CHERTOFF. Is it your recollection that Mr. Burton was in Mr. McLarty's office with the door shut?

Ms. MATHEWS. For parts of the evening the door was shut at times. I was in the secretarial suite. He was in the inner office of Mr. McLarty and there were times when the door was shut when conversations were occurring.

Mr. CHERTOFF. There were other people in the suite?

Ms. MATHEWS. The secretarial suite or Mr. McLarty's?

Mr. CHERTOFF. The office suite, in general, first.

Ms. MATHEWS. The office suite in general had people coming in and out during the evening.

Mr. CHERTOFF. Did some of those people go into Mr. McLarty's inner office?

Ms. MATHEWS. Only at one point that I recollect.

Mr. CHERTOFF. What point was that?

Ms. MATHEWS. It was a point I discussed in my previous testimony, and it was around the time of a conversation with the Park Police that Bill Burton had.

Mr. CHERTOFF. Who was in the office at that point in time?

Ms. MATHEWS. I recall that it was Bill, myself, Dee Dee Myers, I think David Dreyer was there at the time, and if I refer back to my notes—my memory doesn't serve me, but it is in the notes. Dee Dee and David were the two people.

Mr. CHERTOFF. Now, you remember Bernie Nussbaum was in the suite at a point in time?

Ms. MATHEWS. In the secretarial suite at one point, I recall him being there, yes, sir.

Mr. CHERTOFF. Do you remember whether he went into Mr. McLarty's inner office?

Ms. MATHEWS. I'm sorry, I have no recollection of that.

Mr. CHERTOFF. You don't remember one way or the other?

Ms. MATHEWS. No, sir.

Mr. CHERTOFF. You do remember having a conversation with Mr. Nussbaum, though, at the time he came down to the suite?

Ms. MATHEWS. I don't know where he came from. At one point, I did have a conversation with him in the secretarial suite.

Mr. CHERTOFF. I can tell you for the record his testimony during the hearing was that after he left the office of Mr. Foster, the White House Counsel's Office, he came down to that suite. I can also tell you that according to the records we have, Mr. Foster's office suite was sealed by Secret Service Officer O'Neill at 11:41 p.m. Eastern time, which is exactly the minute that Mrs. Clinton was speaking to you, Mr. Burton, or within a minute. Now, I would like you to continue with the conversation you had with Mrs. Clinton in this phone call.

Mr. BURTON. OK.

Mr. CHERTOFF. You've discussed the notification back in Arkansas. You've discussed the details that you've learned about Mr. Foster's death. What else?

Mr. BURTON. We then talked about—and I remember it because she was the only person all night that I talked to about this topic—depression as a disease.

She explained that her friendship with Mrs. Gore, the Vice President's wife, had been very instructive in that regard, in understanding depression, in understanding mental illness which often leads to suicide. We talked about what a destructive illness depression is. The primary reason being that its symptoms are so often hidden from us, from those of us who know the people that are suffering from depression, from those of us who work with them, who live with them. We talked about how very tough depression is, but I remember her point was how it destroys a person's logic and will lead to suicide.

It was a very helpful conversation for me, and that's part of the reason I remember that, because it made me think about it like a disease, to the extent you can explain the unexplainable.

Mr. CHERTOFF. Now, Mr. Burton, let me ask you, who brought up the subject of whether Mr. Foster was depressed?

Mr. BURTON. She knew that I had known Mr. Foster, he was the person at the Rose Law Firm who was responsible for my having clerked there, and I think just prior to talking about that, she asked me how I was doing. She, though grieving herself, was compassionate in that regard and asked me how I was holding up, this must be tough. We had just talked to the Park Police about finding a suicide victim's body. We talked about notifying, calling some old friends in Hope, Arkansas to notify his mother. I think she correctly identified that it was a pretty distressing night for me, that it was tough and she said how are you doing.

Mr. CHERTOFF. But my question—

Mr. BURTON. When I explained to her—I said one of the things that's so tough about this is that it just—how could Vince Foster have killed himself. That's when she said one of the things that's helped me to understand this has been my friendship with Tipper Gore who understands the history of depression and whatnot and then she explained that background a little bit.

Mr. CHERTOFF. Did you have an understanding or did she indicate to you as of that point, which is now literally about only an hour and a half after she's learned, to your knowledge, of Mr. Foster's death, was she indicating to you in this conversation that she already had an understanding that he had been depressed and this was caused by depression?

Mr. BURTON. I think what she was saying was that in a suicide, often, where you have somebody like Mr. Foster who doesn't, in his day-to-day life, appear to be somebody despondent, appear to be somebody who is distraught enough to kill himself, how, in fact, they can be depressed.

It was more just an explanation to me about it.

Mr. CHERTOFF. What I am having trouble with here, Mr. Burton, is you begin with her asking you or your volunteering the gruesome detail about the gun being placed in the mouth in order to make Mrs. Clinton aware of your conclusion that it is a suicide rather than a death by another cause; right? Then, immediately, she tells you that she has concluded, based upon her thinking about this,

that this was caused by depression. Is this the way the conversation was?

Mr. BURTON. A couple of corrections there. One was I was repeating to her the Park Police's conclusion that it had been a suicide.

Mr. CHERTOFF. Which you did because——

Mr. BURTON. Which I accepted after hearing the details of the scene, I did accept that conclusion.

Mr. CHERTOFF. You wanted to convey that to her so she would understand that the Park Police believed it was a suicide and the reasons why; right?

Mr. BURTON. That's correct.

Mr. CHERTOFF. From there, she had concluded, based on her experiences talking to Mrs. Gore, that depression often causes suicide and he might have been depressed. I am trying to figure out how you move from your telling her it is a suicide to her, as you've testified a moment ago, telling you that she's thought about it and she's now explaining to you how these things are caused by depression. It seems to me you have just told her it is a suicide and now you are telling me she's come back to you and said she has been reflecting on this and has come up with a cause.

Mr. BURTON. Mr. Chertoff, she had been told earlier in the night, maybe an hour earlier, I don't know when, maybe whenever Mr. McLarty called her. I think if, in fact, this call came at 11:40 Eastern time, Mr. McLarty had notified her 2 hours prior that Mr. Foster had killed himself, a body had been found at Fort Marcy Park and that it appeared to be a suicide. That was from the initial call we had from the Park Police, that was how they reported it to us.

So she had known for that time. She, like everybody who knew Mr. Foster well—I wish I could—I take that back.

I am not in a position to say, well, since I have vast experience with close friends committing suicide, I can tell you this always happens, or this is generally how people react. I don't. I have never known anyone else to commit suicide that was close to me. What I can tell you is that it seemed like that night everybody who was particularly close to Mr. Foster wanted to talk about it, wanted to talk about are we sure it was a suicide, how could we have seen this coming? We didn't see it coming. Is there anything we could have done? I wonder what prompted him to do it? That was the reaction of everybody, not just that night, but, quite frankly, for the next several days.

Mr. CHERTOFF. Mr. Burton, did you talk to Mrs. Clinton about the fact that there had been a request made to seal Mr. Foster's office?

Mr. BURTON. No.

Mr. CHERTOFF. I want to read to you from your deposition of July 5, 1995 at page 67, commencing at line 16. Do you have that?

Mr. BURTON. Yes.

Mr. CHERTOFF. The question was asked:

Question: What did you do that evening after the second time you visited Mr. McLarty until the time you left the White House?

Answer: That's a long period of time. I spent the time trying to get more information about the suicide. I spent some time trying to notify people who ought to be notified, relatives, friends, professional colleagues. I spent some time making some logistical arrangements as to where people were going to be. I spent some time as-

sisting perhaps on the press release that went out that night. I commiserated with friends and colleagues at the office and I think that pretty well covers it.

Is there some reason you didn't mention conversation with the First Lady in that answer?

Mr. BURTON. There is no reason I didn't mention it, no.

Mr. CHERTOFF. Is there any place in your deposition you recall mentioning that you had spoken to the First Lady that night?

Mr. BURTON. I don't ever recall mentioning it in my deposition or in my prior testimony.

Mr. CHERTOFF. Ms. Mathews, on that evening, did Mr. Burton indicate to you at all or were you aware in any way, shape or form that the First Lady had called Mr. Burton?

Ms. MATHEWS. No, sir, I was not aware of that specific call. I was away from the desk, as we discussed previously, several times.

Mr. CHERTOFF. Mr. Burton didn't mention to you at any point that evening the First Lady just called and I spoke to her?

Ms. MATHEWS. No, sir, we did not discuss the First Lady's call. We did not discuss the calls that were being made or received that night.

Mr. CHERTOFF. Mr. Burton, my time is up, but let me leave with you this question. When you got off the phone with the First Lady, did she tell you to convey any sentiments to anybody else around? Did she say let everybody know you have my support or my condolences or anything?

Mr. BURTON. What I remember leaving the conversation with was this concept that it might be helpful to learn a little bit about depression. I remember she specifically said that she thought Mrs. Gore might be a resource that we could turn to, as people in the White House, for dealing with this because of her training and her experience in that area.

Mr. CHERTOFF. Maybe you missed my question. My question was, at any point in the call—which, according to your testimony, you were in the White House, she's called you there, it is the only call, according to the record, that she makes to the White House other than to the personal residence where the President is that night—at any point in the call, did Mrs. Clinton say to you, please convey to everybody my feelings about how terrible this is?

Mr. BURTON. I don't remember that comment, no.

Mr. CHERTOFF. She never said to you, as you're sitting there with all these people in and out of the White House, please tell everybody else in the White House, in substance, I want them to know this is a terrible tragedy or I support them or we all have to do something? She gave you no sentiment, no thought, no idea to convey to anybody else in the White House that night?

Mr. BURTON. Mr. Chertoff, it was probably the most thoughtful phone conversation I had with anyone that night, or perhaps over this whole period. She certainly expressed her deep grief and sadness to me, she asked me how I was doing. I think your question assumes that people were coming in and out of the Chief of Staff's Office. I told her that I had been spending the evening notifying the people back home, back in Arkansas.

Mr. CHERTOFF. But my question to you—I just need to get this answer, Mr. Burton, and my question to you is, this is a call to you in the White House. You've spoken to her for 10 minutes. At no

point does the First Lady say, if you see people on the staff at the White House, please tell them some thought or some sentiment or some wish or some prayer that she wants to convey to them?

Mr. BURTON. I don't recall that. That's not inconsistent with the way she is, but I know I don't recall that. I don't recall it.

Mr. CHERTOFF. Because I think you know my followup question is going to be, did you tell anybody that evening that you had spoken to the First Lady and that she had conveyed any kind of a thought about this suicide?

Mr. BURTON. I remember telling people about the fact of the phone call. I don't recall passing along any message from the First Lady to anyone.

Mr. CHERTOFF. Who did you tell about the phone call?

Mr. BURTON. Virtually anybody who asked me about who did you speak to, as you were notifying people, who have you talked to.

Mr. CHERTOFF. Did you tell Ms. Mathews, who was sitting right outside in the secretarial area?

Mr. BURTON. I don't recall whether I told Ms. Mathews.

Mr. CHERTOFF. Ms. Mathews, did he tell you?

Ms. MATHEWS. No. As I said, we didn't discuss the phone calls that were coming in.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Ben-Veniste.

The CHAIRMAN. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

Mr. Burton, let's go back over these details. If I understand your testimony correctly, you were the person designated to be receiving information that evening, and to be notifying individuals back in Arkansas?

Mr. BURTON. Yes, sir.

Mr. BEN-VENISTE. You had received information from direct conversations with the Park Police officials regarding information that they had learned in terms of the identification of Mr. Foster's body, the place at which the body was found, and various details concerning the suicide?

Mr. BURTON. That is correct.

Mr. BEN-VENISTE. They had provided to you information that they said established in their minds that this was a suicide and you listened to that information and you passed it along?

Mr. BURTON. Yes, sir.

Mr. BEN-VENISTE. Now, you were told by Mr. McLarty, if I understand your testimony, that the President might be asking you for followup details?

Mr. BURTON. Yes, sir.

Mr. BEN-VENISTE. Mr. McLarty also told you that the First Lady might be calling you for details?

Mr. BURTON. I don't remember that as specifically as I remember him telling me that the President would ask that, but I generally recall that.

Mr. BEN-VENISTE. But you were there in the White House, essentially you were the command post for the receipt and dissemination of information at this point to the close friends of Mr. Foster who

needed to be notified and to those in the White House who were seeking information?

Mr. BURTON. That's correct. To be fair, there were others. Ms. Huber, for example, who Mr. Chertoff mentioned, too, helped notify people back in Arkansas.

Mr. BEN-VENISTE. There were a lot of people that had to be notified?

Mr. BURTON. That's correct.

Mr. BEN-VENISTE. This was a process you didn't think you could be perfunctory in the notifications given the tragedy that had occurred?

Mr. BURTON. That's correct.

Mr. BEN-VENISTE. Now, for example, I take it with respect to notifying Mr. Foster's mother, that there was a lot of planning that went into that, to get a hold of Mr. Frazier and to get a hold of the preacher who accompanied Mr. Frazier and to make sure all that was in place before anything about this went out over the air waves?

Mr. BURTON. There were several phone calls. Mr. Frazier was quite helpful in that regard, as he always is.

Mr. BEN-VENISTE. So it was not any big surprise to you, I take it, when the First Lady called and contacted you as a person who would be the repository of information obtained that evening from various sources about this tragedy?

Mr. BURTON. That's correct.

Mr. BEN-VENISTE. If I understand the substance of what you learned in that conversation and you imparted, it was that Mrs. Clinton asked you whether Mr. Foster's mother had been advised of his death, and you advised her of the circumstances regarding Mr. Frazier and the preacher?

Mr. BURTON. That's correct.

Mr. BEN-VENISTE. Then she asked you details and you provided those details to the best of your then-present recollection, which I take it was very fresh at that moment?

Mr. BURTON. Yes, sir.

Mr. BEN-VENISTE. Including the awful circumstances of the details of how he had shot himself?

Mr. BURTON. That's correct.

Mr. BEN-VENISTE. At some point in the conversation, the conversation turned to a discussion of depression, and Mrs. Clinton mentioned that Mrs. Gore had done a great deal of work or had a repository of information regarding depression and suggested that she might be a resource for the White House staff to draw upon in the hours and days that were to follow?

Mr. BURTON. Yes, sir.

Mr. BEN-VENISTE. Did anything about that conversation strike you as unusual or inappropriate or worse?

Mr. BURTON. Nothing unusual; nothing inappropriate.

Mr. BEN-VENISTE. Was there anything nefarious that occurred in that conversation?

Mr. BURTON. No, sir.

Mr. BEN-VENISTE. Was there any discussion at all of the contents of Mr. Foster's office or his papers or any such thing?

Mr. BURTON. No, sir.

Mr. BEN-VENISTE. Now, it has been brought out by my friend, Mr. Chertoff, that the telephone call came in at the very precise moment that the White House electronic records show that the White House Counsel's Office suite was sealed. In your mind, is there any connection between that event and the fact that Mrs. Clinton happened to have called you at that moment?

Mr. BURTON. No, sir.

Mr. BEN-VENISTE. Let's turn, if we will, to the issue of the phone number, this auxiliary phone number which has been described by Mr. Chertoff and others as the mystery phone number. Do you happen to know whether this particular phone number was the phone number that was on your card?

Mr. BURTON. I don't know, Mr. Ben-Veniste, I just don't remember. Mr. McLarty originally gave it to me in an oral conversation, gave me the backup White House switchboard number and I put in it my Rolodex. He called me a couple of times and asked for that number and I gave it to him.

Mr. BEN-VENISTE. Did you know whether this was a number in wide circulation, the number that you had written down?

Mr. BURTON. I assumed the number I had been given was not a number in wide circulation.

Mr. BEN-VENISTE. Do you know whether that was the only number that was available to circumvent the White House switchboard?

Mr. BURTON. I know it was not the only number to circumvent the White House switchboard.

Mr. BEN-VENISTE. Mr. Chairman, may I bring to the Chair's attention the fact that we had, as a Committee, in our staff efforts to identify this number, contacted Bell Atlantic as early as November and had made repeated requests. They were the ones who issued the number and they had not only difficulty, but they were not able to provide the answer to the listing of that number.

Now that we have the number identified as one of perhaps many or several auxiliary numbers that could have bypassed the White House switchboard, I don't see any nefarious or obstructionist either motivations or possible motivations as to why this number would have not been provided to us in terms of the identity of what it was at the very earliest moment that the White House found out about it. I just don't see it.

At this point, perhaps Senator Dodd.

Senator DODD. The purpose of these numbers was because the regular White House number would often be busy, would it not, and people couldn't get through?

Mr. BURTON. Yes, sir.

Senator DODD. That wasn't an uncommon thing to encounter?

Mr. BURTON. In addition to it being busy, sometimes it rang inadvertently, it would ring for 10 minutes before somebody could get around to answering it. I had the suspicion that the auxiliary numbers had a higher priority, I know they were answered earlier by the operators.

Senator DODD. Indeed, the President had been on the television, on the Larry King show, and there may have been—and I am just speculating at this point, sitting here thinking about this issue—there may have been many people who called in to comment on the President's appearance on the Larry King show?

Mr. BURTON. That's possible. I wouldn't know.

Senator DODD. I want to commend you, Mr. Burton. I thought you provided very helpful testimony this morning. Again, when suggestions are made using the kind of language we are talking about, mystery numbers and the timing of calls and so forth, I think your testimony about the content of this call—and I think anyone watching or listening to you would be impressed that this, in fact, was a call of someone who wanted to know more information about someone who had been very close, a person the First Lady worked with, had known a long time, and had known of your close association with Mr. Foster, going back to days in Arkansas—I am impressed by the humanity of it.

Contrary to those being of some mystery here, I think it sheds new light on the quality of people we are talking about. Concern is not just about you, but other people who would be affected by, again, a close, personal friend of an awful lot of people in that building and, that evening, the apparent taking of his own life. I thank you immensely for the testimony. You have been extremely helpful. I think it's been helpful to the Committee.

Mr. BURTON. Thank you, Senator.

The CHAIRMAN. Senator Faircloth.

Senator FAIRCLOTH. Thank you, Mr. Chairman. I have a few questions. One thing is, Mr. Burton, I would like—I guess I am more interested in the delay. Why it took so long. The Wall Street Journal ran this on November 10th. Did you not see it or hear about it or know about all this great turmoil to try to locate this number?

Mr. BURTON. I recall hearing about the fact that there had been questions propounded to Mrs. Clinton about a mystery number and some deadline coming up. I knew about it last week, which is when it occurred to me that it may have been the personal phone call that I had taken from Mrs. Clinton, but as to knowledge prior to last week about putting my phone call with her together with any attempt by this Committee to find the telephone record, no, I did not see it. I don't subscribe to The Wall Street Journal.

Senator FAIRCLOTH. With all the publicity and all going on in Austin, as you are in Austin now, as well as everywhere else, it just didn't somehow trigger you that this might be the phone call and the number that you had, no? It was just oblivious to you?

Mr. BURTON. Once, it did occur to me.

Senator FAIRCLOTH. But you are saying that was last week?

Mr. BURTON. That's correct. I notified counsel. I think you got the information from the White House, but now, unfortunately, I'm in Austin practicing law and not able to track the goings on of this Committee and its work on a daily basis.

Senator FAIRCLOTH. I can't dispute you, but it sure does seem unusual with as much publicity as that number had and the White House and you being there, that months could go by and you not figure that this might be something. Who issued this number?

Mr. BURTON. I do not know.

Senator FAIRCLOTH. Who was the person in the White House that normally would have issued these numbers and arranged that? Would it have been Patsy Thomasson?

Mr. BURTON. The number I had that Mr. McLarty had as a backup number to the switchboard, Mr. McLarty gave to me. I don't know where he got that. I had assumed he got it from what we call WHCA, the White House Communications Agencies, but I am not sure who issues them.

Senator FAIRCLOTH. When you were at the White House, how often did you speak with the First Lady? Was it on a daily basis or would it be considered a not ordinary event that you would speak with the First Lady?

Mr. BURTON. Having a conversation of this nature, a 10-minute telephone conversation was an extraordinary event for me. That's probably why I remember it so well. Certainly, I would exchange greetings with her whenever I would pass her in the hall and perhaps worked on a project or two in which she was involved where we had a little more substantive conversation. Then, I would occasionally, as Mr. Chertoff asked, I would occasionally go over to the White House for a basketball game or a dinner or something, and we would have conversation, but it is hard to say we talked X number of times a week or a month.

Senator FAIRCLOTH. I guess I am having trouble understanding that after talking to Susan Thomases, Hillary Clinton called you immediately, just to reach out. She had a long conversation with Susan Thomases and she called you just to reach out about Vince Foster. Are you telling the Committee under oath that the First Lady did not ask you to do anything, or not to do anything, in regard to Mr. Foster's office? She didn't ask you to seal it, not seal it, she didn't discuss you doing anything to Mr. Foster's office?

Mr. BURTON. That's correct, she did not.

Senator FAIRCLOTH. Did anyone else talk to the First Lady like Mr. Nussbaum or Maggie Williams during this call? I mean, did they come on the phone, was anybody else on the phone?

Mr. BURTON. No, sir.

Senator FAIRCLOTH. How would Mrs. Clinton have gotten this number or would she normally have had a list of these numbers, or—

Mr. BURTON. I can speculate, Senator, if you would like me to do that.

Senator FAIRCLOTH. Go ahead.

Mr. BURTON. Mr. McLarty, when he would travel and would need access to the White House, was not particularly good at remembering specific individual's direct lines. He knew the switchboard line, but knew you couldn't always get through to the switchboard so he asked for and received a backup number. My suspicion is that Mrs. Clinton, who you may remember was traveling back to Arkansas at that time because her father was very ill and was staying with her mother, either had a backup number herself—again, this is speculation—or maybe he had given to her mother that backup number to where if you needed to call somebody in the White House, this is a better number to use than the 456-1414 number that the directory assistance gives out to anyone calling and asking for the White House switchboard. But that's pure speculation.

Senator FAIRCLOTH. All right. Let me ask you, Ms. Mathews.

Ms. MATHEWS. Yes, sir.

Senator FAIRCLOTH. Was Gene Sperling at the White House on July 20th, do you remember? Did you ever see him, was he in the second floor offices?

Ms. MATHEWS. Yes, sir.

Senator FAIRCLOTH. Has Mr. Sperling ever spoken to you about seeing anyone going in or out of Mr. Foster's offices that evening?

Ms. MATHEWS. No, sir, he has not.

Senator FAIRCLOTH. Mr. Burton, you called Maggie Williams at 3:05 on July 22nd. When you were here the last time, you couldn't recall why you had called her. As you're here today and have had time to think about it and think over it, and I am sure you have, do you remember why you called Maggie Williams on July 22nd?

Mr. BURTON. I do not, Senator.

Senator FAIRCLOTH. Your memory hasn't improved any in the past month or two?

Mr. BURTON. It has probably gotten worse.

Senator FAIRCLOTH. Do you know a man by the name of Jim Lyons, a Denver attorney?

Mr. BURTON. I know the name, Senator, that's all.

Senator FAIRCLOTH. Did you ever see him around the White House?

Mr. BURTON. It may be that I met Mr. Lyons on one occasion, somebody introduced me to him, but I cannot say that for sure. I don't know if I would recognize him if he were in this room.

Senator FAIRCLOTH. Was he around the White House on the night of July 22nd?

Mr. BURTON. I have no recollection of that.

Senator FAIRCLOTH. You didn't see him?

Mr. BURTON. I don't know that I was around the White House on the night of the 22nd.

Senator FAIRCLOTH. The Secret Service log shows that he was admitted entrance to the White House by Bruce Lindsey that night. Are you aware that Mr. Lyons worked on Whitewater during the campaign in 1992?

Mr. BURTON. My recollection is that's where I heard that name.

Senator FAIRCLOTH. Do you know if Mr. Lyons looked at any files that were removed from Vince Foster's office——

Mr. BURTON. Senator——

Senator FAIRCLOTH. —on that night or any other time?

Mr. BURTON. Senator, I don't even know the basic premise of your question. I don't know anything about files that were removed from Mr. Foster's office, and I certainly don't know the answer to——

The CHAIRMAN. You answered the question.

Mr. BURTON. —whether Mr. Lyons looked at such files.

Senator FAIRCLOTH. That's all, Mr. Chairman.

The CHAIRMAN. Senator Grams. Mr. Chertoff.

Mr. CHERTOFF. Mr. Burton, I want to get back to this issue of the number. This number is an auxiliary number used to go around the switchboard?

Mr. BURTON. I do not know that. That's based on what my understanding was of what was in the letter that the White House had sent to the Committee last week.

Mr. CHERTOFF. Do you know of any reason why Mrs. Clinton simply, if she wanted to track you down, simply wouldn't call the main switchboard or call Mr. McLarty's number directly?

Mr. BURTON. She may not have known Mr. McLarty's direct extension, but I don't know that. The first part of your question about why she didn't call the switchboard, I don't know the answer to that. I don't know.

Mr. CHERTOFF. Ms. Mathews, you will agree with me at this point in the evening the phones were not ringing off the hook at the White House; right?

Ms. MATHEWS. Yes, sir, as I testified earlier.

Mr. CHERTOFF. So it is not like at a quarter to midnight the regular switchboard is all blocked up?

Ms. MATHEWS. May I just clarify that? My comment applies to where I was sitting. Of course, I wasn't where the White House switchboard is so my comment applies to the place I was at.

Mr. CHERTOFF. You were in the suite where Mr. Burton was?

Ms. MATHEWS. The secretarial area, right, yes, sir. I just wanted to clarify.

Mr. CHERTOFF. Now, your understanding, Mr. Burton, was that Mr. McLarty suggested Mrs. Clinton might want to call you to get details about the suicide?

Mr. BURTON. A general recollection of that.

Mr. CHERTOFF. Did he tell you to stay by the phone in order to wait for a call?

Mr. BURTON. I think it was assumed I would be by the phone that evening because of the other duties I had.

Mr. CHERTOFF. You told Mr. McLarty that you were going to be in his office?

Mr. BURTON. That's correct.

Mr. CHERTOFF. So Mr. McLarty, in getting in touch with the First Lady, could naturally have given the First Lady his own phone number and said oh, Mr. Burton's going to be there if you want to reach him?

Mr. BURTON. I suppose he could have, yes, sir.

The CHAIRMAN. Let me, if I might, I just think we are getting close to a time and I don't know if Senator Sarbanes or Mr. Ben-Veniste want to propound any questions, but I would like to ask just one. Did there come a time when someone from the White House asked you about this telephone number, 202-628-7087?

Mr. BURTON. I don't recall that, Senator.

The CHAIRMAN. Did you have a conversation with Jane Sherburne about this number?

Mr. BURTON. No, sir, I did not.

The CHAIRMAN. Did you advise anybody in the White House about this telephone number, that it came to your attention that this was a—

Mr. BURTON. Indirectly, I notified my counsel.

The CHAIRMAN. When did you do that?

Mr. BURTON. Last week.

The CHAIRMAN. How did it come to be that last week you notified—what circumstances did you come to that it suddenly struck you that this was the number last week? How did that come to your attention?

Mr. BURTON. It is hard to remember specifically. It was early in the week. I traveled to Washington early in the week last week and it may have been in a newspaper I saw.

The CHAIRMAN. We are going to have to come back. I want to pursue this line so I am going to suggest—and I have to tell you something, now, I have some difficulty.

Senator SARBANES. What's the difficulty? I mean, that's unfair to the witness.

The CHAIRMAN. I have some difficulty in this. You are telling us that last week when you were Washington—did you volunteer this or did you call up the White House and tell them, by the way, I might know what this number is?

I would like to know how he advised the White House about this.

Mr. BURTON. Excuse me, Mr. Chairman. This number, to this day, does not look familiar. As I told Mr. Chertoff, I recognized this number only from this [indicating], I saw a headline that made a reference to a mystery call and I said, I wonder if that's the call that Mrs. Clinton made to me. I notified my counsel, who in a subsequent conversation with the White House volunteered that information, and it was included in the letter that you had sent.

The CHAIRMAN. Did you speak to anybody directly at the White House?

Mr. BURTON. Prior to——

The CHAIRMAN. Last week.

Mr. BURTON. After I talked to my attorney, I returned a call to Miriam Nimetz, I believe, who is a counsel that works with Jane Sherburne, and she is the only person in the White House I talked to about this matter last week. The phone call was merely to tell me that the letter had been sent.

The CHAIRMAN. Are you saying that last week, you came into town, and you saw this question about the mystery telephone number. Thereafter, you said, well, maybe that's the number that Mrs. Clinton called me on?

Mr. BURTON. I did come into town last week and last week I saw the fact of the mystery call in the headlines.

The CHAIRMAN. Where was that?

Mr. BURTON. It may either have been at my Dallas office or my Austin office before I traveled up here where I saw that, but as to where I saw it in——

The CHAIRMAN. You are an attorney, you understand there is some significance as it relates to whether or not the statement that the White House has just ascertained, or basically the assumption that we are led to believe that they just found out about this number, when we have been looking for this number and it just so happens that we sent interrogatories out about this number, and that is the first time you learned of this and then informed your counsel, and you called your counsel and you said maybe this is the number; is that what you did?

Mr. BURTON. I said they are looking for a——

The CHAIRMAN. I am not looking to get into the lawyer-client privilege, but I am trying to find a fact pattern here. Did you call him up and say this may be the mystery number or what?

Mr. BURTON. When I learned that there was a mystery call that had been from Mrs. Clinton's mother's condominium to the White House.

The CHAIRMAN. That's the first time you ever learned about this, you haven't followed this at all?

Mr. BURTON. You know I followed it—I followed it somewhat, of course, I've testified in front of the Committee.

The CHAIRMAN. Mr. Burton, aren't you aware, though, that the Committee wanted to know and for some point in time was attempting to ascertain who made that call from the Clinton residence, what that number was? You are not telling us that for the first time you became aware of this last week; is that what you are suggesting?

Mr. BURTON. It was the first time that I put the two together; that I've never been asked about Mrs. Clinton's call to me that evening and that, therefore, I have never had a chance to testify about that, that there was a call.

The CHAIRMAN. Wouldn't it be more accurate to say that because we did not ask you specifically whether or not you received a phone call from Mrs. Clinton that you did not answer that? Are you saying this is the first time, last week, that you came to realize that this telephone number and this was the question about who did Mrs. Clinton call, and if it wasn't Mrs. Clinton from the Rodham residence, who was it? So it was last week that you reached out to your lawyer, you reached out to him and said, by the way, that may be the mystery call, or the mystery number; that's what you are saying?

Mr. BEN-VENISTE. He doesn't know the number. I don't think he knows the number. He's consistently testified to that here today.

The CHAIRMAN. That may be, but you are saying that may be the call that was made and that may be the number; is that what you are saying?

Mr. BURTON. That's right. I mentioned that to my counsel last week. That's right. When I heard that there was interest in a call that—

The CHAIRMAN. How did you learn about that interest?

Mr. BURTON. Again, I don't recall. It was probably from reading a newspaper article, but I can't tell you for sure.

The CHAIRMAN. We have several minutes between now and the vote, so we will return, 15 minutes? Give us a chance to get there and back, 10 minutes? I don't think we have much more to go. We will return in 10 to 15 minutes. We stand in recess.

[Recess.]

The CHAIRMAN. The Committee will come back to order.

I believe, Mr. Burton and Senator Sarbanes, we can finish up within a relatively short period of time, and "relatively" in these situations can go on and on but let me share with you, Mr. Burton, an observation that I make, and maybe it's not fair, but I don't mean to be unfair. You're telling this Committee that you do recall Mrs. Clinton calling you on the evening of the 20th; is that right?

Mr. BURTON. Yes, Mr. Chairman.

The CHAIRMAN. Did she ask you to do anything?

Mr. BURTON. Other than what I have mentioned to Mr. Chertoff about—

The CHAIRMAN. No, no, please. Did she ask you to do anything?

Mr. BURTON. No, other than using Mrs. Gore as a resource.

The CHAIRMAN. Fine, I understand that. I'm not trying to keep you, but——

Mr. BURTON. No, I understand.

The CHAIRMAN. Did she ask you if you've seen anybody? Did she ask for anyone?

Mr. BURTON. No, sir.

The CHAIRMAN. Did Ms. Mathews tell you that she was on the phone?

Mr. BURTON. I don't recall how I got the phone call, whether I picked up the phone or whether Ms. Mathews answered the phone or whether someone else answered the phone.

The CHAIRMAN. But it rang on your line?

Mr. BURTON. I don't recall which line it rang on. They are multi-line phones that we answer.

The CHAIRMAN. You were in the Chief of Staff's Office, though?

Mr. BURTON. Yes, sir.

The CHAIRMAN. She didn't ask for Mr. McLarty?

Mr. BURTON. I don't recall that she did.

The CHAIRMAN. Other than occasions when there was a specific project that you may have been involved in, did Mrs. Clinton ever call you before?

Mr. BURTON. Other than when there was a specific project we were working on, no, I can't think of her having——

The CHAIRMAN. Where was Mr. McLarty at that time?

Mr. BURTON. He was at the home of Lisa Foster, the widow of Mr. Foster.

The CHAIRMAN. Mrs. Clinton knew that, didn't she?

Mr. BURTON. She did.

The CHAIRMAN. I don't like to characterize the nature of things that have taken place, but if we are going to look at this event as you have described, we're suggesting that at about 11:41 p.m., you got a phone call from the First Lady and that you got into a conversation about the state of people's minds, how are you, and obviously you expressed your grief and your concern and that was it, she didn't ask you to find Mr. Nussbaum.

You see, Mr. Nussbaum left the office just at that point in time, at least someone left Vince Foster's office at or about the same time that that call came in. It wouldn't be illogical to think that Mrs. Clinton tried to reach Mr. Nussbaum there and couldn't reach him?

Mr. BURTON. I don't understand why she would have called in to the Chief of Staff's Office, but——

The CHAIRMAN. Supposing she couldn't get Mr. Nussbaum, she had just spoken to Mr. Nussbaum or that she called there and couldn't find him there, did she call the Chief of Staff's Office? You see, the fact is that she calls you and you say that you remember this and the circumstances in which this comes to your attention and why really, why the publicity given the fact of who made this call. This wasn't just a call from the White House. This had been described heretofore as a call coming from Mrs. Clinton's mama's residence, from the Rodham residence during this period of time when she just spoke to you for 10 minutes about a possible resource for your grief.

We had another very prominent lawyer here who made lots of phone calls, and she was reaching out to all these people to share with them in this difficult period of time, which I understand is difficult, I don't mean to deprecate the impact when someone loses a loved one under any circumstances, let alone such a shocking way. I have to ask you, she didn't ask you if Bernie had given you any messages?

Let me ask you, did she talk to you about securing the shop upstairs?

Mr. BURTON. She did not talk about that. If I can correct one assumption you made in your last statement, Mr. Chairman, she didn't call merely to talk about depression. That was after——

The CHAIRMAN. You brought it up?

Mr. BURTON. After we had talked about the specific reason she called, which was what's being done to notify the people in Arkansas and what can you tell me about what the Park Police know. I haven't——

The CHAIRMAN. Let me ask you this: Didn't she tell you Maggie Williams was talking to people about notifying people in Arkansas?

Mr. BURTON. If she did, I don't recall that.

The CHAIRMAN. She didn't tell you to check with Maggie as it related to who the people were who were being notified?

Mr. BURTON. I don't recall that, no, Senator.

The CHAIRMAN. Did she tell you that she had spoken to Maggie Williams?

Mr. BURTON. I don't remember if she did.

The CHAIRMAN. Did she tell you she had just spoken to Susan Thomases?

Mr. BURTON. I don't recall that.

The CHAIRMAN. Did she tell you that she had reached out to Harry Thomasson and had spoken to him?

Mr. BURTON. I do not recall that.

The CHAIRMAN. You see the reasons I'm indicating, these are people who heretofore she had contacted, so if you're going to be contacting people, what people specifically did she ask you to contact? Did she go through a list of people that you would contact?

Mr. BURTON. The one I remember that we focused on was Mr. Foster's widowed mother, and I got her comfortable with the concept that we had taken care of that fully.

The CHAIRMAN. Who had taken care of that?

Mr. BURTON. I had taken care of that along with the help of some friends in Hope, Arkansas, Mr. Frazier, his wife and the Reverend Roark, who were going to go out there and visit with Alice May Foster at her home and let her know, and that seemed to give Mrs. Clinton some comfort.

The CHAIRMAN. You didn't have any messages that you were instructed to give to anybody?

Mr. BURTON. No, Mr. Chairman.

The CHAIRMAN. OK.

Mr. Chertoff.

Mr. CHERTOFF. Mr. Burton, the person who you're telling us told Mrs. Clinton to reach out for you about details of the death was Mr. McLarty?

Mr. BURTON. I think I've testified that the call did not come as a surprise. I specifically remember Mr. McLarty taking me up with the President for that purpose, and I generally remember, although it's not specific, I can't remember the specific time, him telling me that Mrs. Clinton might be calling to get more details.

Mr. CHERTOFF. Now, did you tell Mr. McLarty afterwards that you had spoken to Mrs. Clinton?

Mr. BURTON. I don't remember if I did.

Mr. CHERTOFF. Did Mrs. Clinton ask for Mr. Nussbaum?

Mr. BURTON. I don't recall that she did.

Mr. CHERTOFF. You understood, and presumably Mrs. Clinton did, that Mr. Nussbaum worked very closely with Mr. Foster, they were side by side in offices?

Mr. BURTON. That's correct.

Mr. CHERTOFF. Mrs. Clinton didn't ask, how is Bernie doing?

Mr. BURTON. She may well have. I just don't remember that. I remember the parts of the conversation that we have talked about here this morning.

Mr. CHERTOFF. Did she ask to talk to Bernie Nussbaum?

Mr. BURTON. No, not that I recall.

Mr. CHERTOFF. Did you mention to Mr. Nussbaum that you had talked to Mrs. Clinton?

Mr. BURTON. I have testified previously, I don't remember if I talked to Mr. Nussbaum that evening.

Mr. CHERTOFF. Did Mrs. Clinton ask about a note?

Mr. BURTON. I don't know. I suspect when I was relaying the information that I had from the Park Police, to the extent they had said there was not a note found, I would have told her that, but I don't recall any discussion one way or another about that.

Mr. CHERTOFF. Now, you testified earlier that the two purposes of the call you remember was first, to find out about your notifications and second, to get the information about the circumstances of the death. You told her that the Park Police had not found a note?

Mr. BURTON. If I knew that at the time, I certainly would have told her that. I just don't remember if I knew that at the time. I don't recall one way or the other.

Mr. CHERTOFF. Did she ask you the next question that naturally comes to mind, has anybody looked for a note in his office?

Mr. BURTON. I don't recall any discussion about a note, but—

Mr. CHERTOFF. She didn't exhibit interest in pursuing the note?

Mr. BURTON. I don't recall. I don't recall very well that part of the discussion about the details surrounding the suicide, with the exception of the discussion about the placement of the gun.

Mr. CHERTOFF. Now, the discussion about the placement of the gun came in the context of your describing to her what you had learned from the Park Police?

Mr. BURTON. Yes, sir.

Mr. CHERTOFF. You volunteered that to her?

Mr. BURTON. I did.

Mr. CHERTOFF. Did she indicate she had heard that before?

Mr. BURTON. I don't recall that, no. I felt—I guess my assumption is she had not heard the details before, that's why she was asking me about them.

Mr. CHERTOFF. So your understanding is you were the first person to tell her that?

Mr. BURTON. About the details of the suicide?

Mr. CHERTOFF. Right.

Mr. BURTON. About the fact of the suicide——

Mr. CHERTOFF. About that very important and graphic detail.

Mr. BURTON. That's my recollection, yes, sir.

Mr. CHERTOFF. In what you have described to us previously as an extraordinary conversation?

Mr. BURTON. Yes.

Mr. CHERTOFF. Does it surprise you that in her affidavit, Mrs. Clinton has no recollection of making this call or of talking to you?

Mr. BURTON. Not really.

Mr. CHERTOFF. Does it surprise you that she has no recollection of the call in which she first learned that Vincent Foster had shot himself with a gun in his own hand?

Mr. BURTON. She may have had that detail before she talked to me.

Mr. CHERTOFF. Now you think she may have had it before?

Mr. BURTON. No, she may have known that he killed himself and perhaps that he used a gun. What I described to her were the facts the Park Police had told me that indicated it was a suicide as opposed to somebody putting a gun in his hand.

Mr. CHERTOFF. I'm sorry, you had a discussion with her about what the Park Police told you to the effect that it was a suicide and not that someone had planted a gun in his hand?

Mr. BURTON. What the Park Police told me, they said he killed himself, it was a suicide and I asked a question, I'm a former newspaper reporter, I asked a question to the Park Police, how do you know it was a suicide, and then in fairly graphic detail the Park Police described for me what it was about the scene that——

The CHAIRMAN. What did they say? Before, I thought you indicated and had described that he put the gun in his mouth. Didn't you just say that before?

Mr. BURTON. He did, but, Senator, I think the motion you just made is evidence of why that convinced me it was a suicide.

The CHAIRMAN. I understand that, but did you indicate that he committed suicide with a gun by putting it in his mouth?

Mr. BURTON. Even more specifically than that, Mr. Chairman.

The CHAIRMAN. You did? Tell us.

Mr. BURTON. I relayed what the Park Police had told me.

The CHAIRMAN. I want to hear exactly what you said in this conversation. What did you say to Mrs. Clinton about this?

Mr. BURTON. The part of the conversation I remember telling Mrs. Clinton that I felt rather uncomfortable about was the fact that the gun had been placed into his mouth upside down and that, in fact, his thumb had been where the trigger was. The Park Policeman explained to me that is generally a sign of a suicide because most people think they can do just what you did, Mr. Chairman, which is point the gun in and use your trigger finger to use it. That's a fairly graphic detail, it makes me a little uncomfortable, even now, recounting it even though this information is old.

The CHAIRMAN. Mr. Burton, I want you to know I believe you as it relates to the description, and that then goes back to the question which Mr. Chertoff will now put to you.

Mr. CHERTOFF. Do you think she forgot the conversation the evening of Mr. Foster's death in which you graphically described to her the fact that Mr. Foster's gun was upside down in his mouth and that the trigger guard caught his thumb? You think she forgot that?

Mr. BURTON. You're asking me to speculate on her state of mind?

Mr. CHERTOFF. In your mind, this was a memorable, graphic description of a memorable, indelible event; correct?

Mr. BURTON. Yes.

Mr. CHERTOFF. She doesn't even remember talking to you, according to the affidavit. Did you get the sense she wasn't paying attention?

Mr. BURTON. No, sir.

Mr. CHERTOFF. Let me ask you this. Going back to this issue of the telephone number, it's like an obstacle. Your testimony is she called you for about 10 minutes on that night, and the White House has told us it's to this telephone number. Now, there's only two possibilities about how someone could have made a call on that number. Either Mrs. Clinton had the number in her possession and chose to use that number in order to call you, or someone left her that number.

Let's take the first possibility because I want to work through this with you. If she had the number with her because it was the standard number that she would use to go around the switchboard or to make a priority call, the question is why would it take weeks and weeks for the White House to say oh, that number is the number Mrs. Clinton used to use to get past the switchboard?

Mr. BURTON. I'm really not qualified to answer the question on the White House search for that number or who has——

Mr. CHERTOFF. But you follow my logic here? If this is——

Senator SARBANES. I don't think this witness ought to be asked to respond to Mr. Chertoff's speculation. Now, this has gone on for quite some time. It's not fair to Mr. Burton. I think he's tried to be a straightforward witness here today. He gets asked questions that suggest there's a factual basis, I can see him struggling with it, and there is no factual basis for these questions.

The CHAIRMAN. Senator Sarbanes, you are correct. You are correct, and as it relates to Members making an observation about what may trouble them, but in terms of asking Mr. Burton as it relates to speculating how and why, I think we're going too far and I'm going to ask counsel to refrain from doing that. If he wants to say these are things that are troubling in our findings, we can do that, but I don't think we should ask Mr. Burton to speculate on the how and why.

Mr. CHERTOFF. Let me move on, Mr. Chairman, and ask this question. Mr. Burton, did she indicate to you in the telephone call that someone had left her this number to call?

Mr. BURTON. I don't remember any discussion during the call, and I have no recollection whatsoever as to what line she called in on, what number she called, whether it was a White House switch-

board number or another number. I have no memory whatsoever of that.

Mr. CHERTOFF. Let me go back to the questions that the Chairman asked you right before we broke. You don't have any recollection of the specific telephone number. That's your testimony; right?

Mr. BURTON. That's correct.

Mr. CHERTOFF. The only recollection you carry with you is your recollection that on that evening you had a 10-minute telephone call with Mrs. Clinton; correct?

Mr. BURTON. A telephone call that I would have guessed would have been 10 to 15 minutes.

Mr. CHERTOFF. Now, the chain of events that leads to you being back here before the Committee begins, according to your testimony, when it suddenly strikes you, something strikes you that indicates that you may have some information about a telephone call. Is that your testimony?

Mr. BURTON. Something I read last week, I believe, indicated to me for the first time that the mystery number might be a White House number.

Mr. CHERTOFF. What did you read?

Mr. BURTON. I don't recall. It seems like maybe it was one of the news bulletins or something that summarizes news, and there may have been a story early in the week.

Mr. CHERTOFF. This is last week?

Mr. BURTON. This is last week. Newsday, perhaps, had a story last week. Again, it was a summary in a bulletin of some kind that said they thought the number might be a circumventing-the-White-House-switchboard number.

Mr. CHERTOFF. I don't think the story—

Mr. BURTON. I may be remembering wrong. All I know is last week I read something that made me think for the first time that a mystery number the Committee was looking for might in fact have gone to the White House, there was some possibility of that, which made me think that maybe it was the phone call I had with Mrs. Clinton, at which point I notified counsel.

Mr. CHERTOFF. The letter, the first inkling that we had, that anybody had and that was reported, that this might have been a number that would go to the White House, to a White House phone around the switchboard, was when the White House submitted the letter of December 7, which already contained a summary of your testimony, so it can't be that you read that in the newspaper.

The question is this: When you read in the newspaper stories about the Committee trying to find out who Mrs. Clinton called on that night, on an unidentified number, what was it that made you think that this was a call to you at the White House?

Mr. BURTON. There was something last week that for the first time made me put into the universe of possible numbers a White House number. The reason a White House number hadn't been in that universe prior to that is how could it be a mystery number if it was a White House number.

Mr. CHERTOFF. That's a very good point. How could it be a mystery number if it's a White House number. So what was it, how did the penny drop last week that made you say, even though they're describing it as a mystery number, I think it's probably the time

that Mrs. Clinton called me when I was sitting in Mr. McLarty's office?

Mr. BURTON. All I can tell you is I think it was something I read last week, but if you're telling me it didn't come out until after that, then maybe my memory is faulty, Mr. Chertoff.

Mr. CHERTOFF. Thank you.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. You went to your attorney with this information?

Mr. BURTON. I did. As soon as it dawned on me that that was a possibility, I told my attorney.

Senator SARBANES. Mr. Burton, I must say I think you've tried to be a very straightforward witness here today. The only point I want to make is you get asked these questions that seem to suggest there's a factual basis for them. In other words, did you see so-and-so, did you talk to so-and-so and so forth. In many instances there's no factual basis for that, it's a speculation, and I've seen you struggle with a question because I think you've assumed since the question was put to you, that there must be some basis in fact for the question. In many instances, that's simply not the case, and I think your struggle to recall as best you can what took place here has been commendable.

Now, it seems to me you've come forward with some information that helped resolve these questions that have been asked. I mean, a great to-do has been made about this phone call. You can't identify the number, and that's still your position here today, but you do remember the telephone call and that, it seems to me, answers the so-called mystery over this phone call that was placed from the Rodham residence in effect to the White House, so I want to thank you for trying to help out the Committee.

Ms. Mathews, you're back here a second time. I'm not all together clear why, but I think both times you've tried to tell us what you remember or what you know, and I think your testimony has been consistent throughout.

The CHAIRMAN. I'm going to make an observation and then certainly my colleagues should have the right, if they want to, to respond or make an observation. I don't intend to raise any more questions with the witnesses, but I would observe this, that this is what troubles, I believe, some of the Members of the Committee. Maybe the characterization of this as a mystery number may or may not be quite fair, but obviously it was a mystery to this Committee, and we made attempts to ascertain from what we thought were reasonable efforts with the phone company.

The White House was aware of this. They were aware we were looking for this number for quite a period of time, and I think it is rather disingenuous to submit a letter to us dated December 7, which is now well known, stating that this letter is in response to the Chairman's letter of December 5 seeking information regarding a telephone number as if this was the first time, this was the first time that they learned about our concern. This was no mystery.

If there was any real effort, I have to believe that they didn't need you, Mr. Burton, coming forward when you did to suggest that hey, by the way, this might be the number. I have a tough time really understanding why it took you coming forward, and I'm

not quarreling with you, to make a determination, or why it took Mrs. Clinton's lawyers or Mrs. Clinton herself, to the point that we had to send a deposition to ask about this.

Even then the responses, if I could have the responses, certainly do not, I believe, adequately reflect what you indicated to us took place, and that is, "I do not recall the people I spoke to." I understand that. "Spoke with people. Telephone records of my mother provided. I called my Chief of Staff Margaret Williams at her home, Harry Thomasson," we know that, "Susan Thomases." She made all these phone calls from her home and then this number for the first time appears. There's no indication that the White House switchboard was jammed, 11:40 some odd in the evening, none at all. After she gets off the phone with Susan Thomases, she places a call immediately, not a long period of time, immediately to the White House, to this number, and still doesn't remember the phone call.

So I don't think it's unreasonable for this Committee to wonder why is it and how is it that this number, which was a manner to come around the usual switchboard, was used that evening, and that a phone call in such graphic terms as described by yourself, as it relates to one piece of this, would not be recalled. I mean, you are describing to the First Lady the reason that the Park Police felt this was suicide. Isn't that true?

Mr. BURTON. Yes, Mr. Chairman.

The CHAIRMAN. It was graphic?

Mr. BURTON. Yes, Mr. Chairman.

The CHAIRMAN. It was disturbing to you?

Mr. BURTON. Yes, Mr. Chairman.

The CHAIRMAN. That's why I'm puzzled, that something so tragic as this death and the conveyance not only that it was a suicide, but the manner, the manner in which the police arrived at the conclusion that it was a suicide, that there would be no recollection about that, particularly as it relates to a friend and colleague of many years, that being Mr. Foster.

You see, that's why some people think that White House responses were less than straightforward and candid and that they have been somewhat disingenuous with this Committee. By the way, I've dealt with other agencies like that. In dealing with the CIA, when I was on the Intelligence Committee, you had to ask them exactly, precisely, did so-and-so come in at exactly such a period of time. Otherwise, they would find more ways to say, well, you didn't ask that question. You have to ask the perfect question to get an honest response.

I'm not suggesting that of you, but I am suggesting that's what I think troubles at least this Senator as it relates to the manner in which we finally learn about this number that I think could have been provided to us very easily when we raised this, if there was good faith being exercised by the White House in connection with this. That's an observation I make and I recognize that others may have different interpretations, and that would be fair. Senator Sarbanes, as I indicated—

Senator SARBANES. I must say, Mr. Chairman, some Members of this Committee have extraordinary memories. I would like to see them tested under the circumstances that occurred at the time

around Foster's suicide and see whether 2 years later they could remember. Now, what Mrs. Clinton said in her affidavit was that that evening and the days following were a time of grief and shock, I do not recall all the people I spoke with that evening, although I know I spoke with my husband and to others who shared my grief over Vince's death.

She then says the telephone records her mother provided indicated the calls were made to Margaret Williams, Harry Thomasson, Susan Thomases, Carolyn Huber and her brother. Then she says, "Also, I do not specifically remember these calls 2 years later, they make sense to me, given that these people are some of my closest friends and colleagues." So it's not as though she specifically has a remembrance there and not a remembrance here.

Now, I think Mr. Burton has done his best to help provide helpful information. The phone company itself couldn't identify this number. I mean, Mr. Burton is getting worked over here today about this number, when the phone company itself in response to the staff of this Committee was unable to identify this number. I guess if you want to ask Ms. Sherburne further about how they finally seemed to track it down, that's fine.

She's indicated the efforts they made and, in fact, when she was here and was being taken to task said she thought she was trying to be helpful and instead she gets chewed up about it, but I haven't heard any testimony from these two witnesses that does anything other than help to give me some answers to questions that were being raised, despite, I think, efforts to draw them into improper speculation and despite questions put to them that seem to contain a factual premise that is not there, as a matter of fact.

Questions were being put to you such as you mean to say that you didn't talk to so-and-so, as though suggesting that so-and-so says you talked to them. So-and-so didn't say you talked to them. We don't have any factual basis. I mean, those questions are being put to you one after another, and I must say, I thought you tried to respond as best you could under the circumstance, so thank you for your testimony.

Mr. BURTON. Thank you, Senator.

The CHAIRMAN. Ms. Mathews, Mr. Burton, thank you for your testimony. The Committee stands in recess until 11 a.m. tomorrow morning.

[Whereupon, at 1:57 p.m., the hearing was adjourned, to reconvene at 11 a.m., on Thursday, December 14, 1995.]

[Appendix supplied for the record follows:]

APPENDIX

ALFONSE M. D'AMATO, NEW YORK, CHAIRMAN
 PHIL GRAMM, TEXAS
 RICHARD C. SHELBY, ALABAMA
 CHRISTOPHER S. BOND, MISSOURI
 CONNIE MAJOR, FLORIDA
 LAUCH FAIRCLOTH, NORTH CAROLINA
 ROBERT F. BENNETT, UTAH
 ROD GRAAMS, MINNESOTA
 PETE V. DOMENICI, NEW MEXICO
 PAUL S. SARBANES, MARYLAND
 CHRISTOPHER J. DODD, CONNECTICUT
 JOHN F. KERRY, MASSACHUSETTS
 RICHARD M. BRYAN, NEVADA
 BARBARA BOXER, CALIFORNIA
 CAROL MOSELEY-BRAUN, ILLINOIS
 PATTY MURRAY, WASHINGTON

HOWARD A. MENELL, STAFF DIRECTOR
 ROBERT J. GUFFRA, JR., CHIEF COUNSEL
 PHILIP E. BECHTEL, DEPUTY STAFF DIRECTOR
 STEVEN B. HARRIS, DEMOCRATIC STAFF DIRECTOR AND CHIEF COUNSEL

United States Senate
 COMMITTEE ON BANKING, HOUSING, AND
 URBAN AFFAIRS
 WASHINGTON, DC 20510-6075

November 27, 1995

By Facsimile

Jane C. Sherburne, Esq.
 Special Counsel to the President
 The White House
 Washington, D.C. 20500

Dear Jane:

This follows up on our telephone conversation of today regarding the documents that the White House is withholding from production to the Whitewater Special Committee on grounds of executive and/or attorney-client privilege.

As we discussed, the Whitewater Special Committee hereby requests that the White House immediately produce the following documents for inspection:

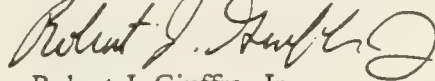
<u>Date</u>	<u>Author(s)</u>	<u>Addressee(s)</u>	<u>Document Description</u>
1-5-94	James Hamilton	President Clinton	Letter re: Whitewater and other matters.
12-20-93	Undesignated	Undesignated	New York Times article, including notation of the President.
11-?-93	William Kennedy	Undesignated	Notes of meeting on 11/5/93 with Eggleston, Engstrom, Kendall, Kennedy, Lindsey, Lyons, and Nussbaum re: Whitewater-related matters.
Undated	Joel Klein	Undesignated	Notes re: Whitewater investment.

<u>Date</u>	<u>Author(s)</u>	<u>Addressee(s)</u>	<u>Document Description</u>
11-10-93	David Kendall	Undesignated	Draft chronology re: Whitewater matters.

The Special Committee is holding public hearings this week, and the failure of the White House to produce promptly these documents will delay the Committee's investigation.

Thank you for your prompt attention to this matter.

Very truly yours,



Robert J. Giuffra, Jr.
Chief Counsel

cc: Richard Ben-Veniste
Minority Special Counsel

November 2, 1995

OCTOBER 31, 1995 WHITE HOUSE SUBPOENA
(A) - (D), (F) - (L) RELATED DOCUMENTS

DATE	AUTHOR (S)	ADDRESSEE (S)	DOCUMENT DESCRIPTION
2/18/94 2/21/94	PODESTA EGGLESTON	FILE	DRAFTS OF MEMO RE: SENATE BANKING COMMITTEE HEARINGS, HOUSE ACTIVITY, AND FDIC DECISIONS
2/25/94	NANCY HERNREICH	PRESIDENT CLINTON	MEMO ATTACHING 2/25/94 MEMO FROM RAYMAR TO THE PRESIDENT RE: WHITE HOUSE/TREASURY CONTACTS
1/5/94	JAMES HAMILTON	PRESIDENT CLINTON	LETTER RE: WHITEWATER AND OTHER MATTERS
1/24/94	UNDESIGNATED	UNDESIGNATED	DRAFTS OF CONGRESSIONAL TALKING POINTS ON WHITEWATER RE: APPOINTMENT OF A SPECIAL COUNSEL AND CALL FOR CONGRESSIONAL HEARINGS
UNDATED	UNDESIGNATED	UNDESIGNATED	DRAFTS OF CONGRESSIONAL TALKING POINTS RE: APPOINTMENT OF A SPECIAL COUNSEL AND CALL FOR CONGRESSIONAL HEARINGS
3/2/94	JAMES CARVILLE	THE EDITORS OF THE NEW YORK TIMES	DRAFT LETTER TO THE EDITOR RE: EDITORIAL ON WHITE HOUSE, INCLUDING HAND-WRITTEN NOTES BY CARVILLE AND LINDSEY
UNDATED	MICHAEL WALDMAN	UNDESIGNATED	DRAFT SAMPLE OP-ED RE: APPOINTMENT OF AN INDEPENDENT COUNSEL
1/8/94	VICTORIA RADD	UNDESIGNATED	CALENDAR ENTRY RE: LYONS REPORT
UNDATED	VICTORIA RADD	UNDESIGNATED	NOTES ON THE LYONS REPORT
1/3/94	NEIL EGGLESTON	JOEL KLEIN	MEMO RE: RESPONDING TO STORIES AND ALLEGATIONS ABOUT WHITEWATER
12/20/93	UNDESIGNATED	UNDESIGNATED	NEW YORK TIMES ARTICLE, INCLUDING NOTATIONS OF THE PRESIDENT

S 011579

DATE	AUTHOR(S)	ADDRESSEE(S)	DOCUMENT DESCRIPTION
11/?/93	WILLIAM KENNEDY	UNDESIGNATED	NOTES OF MEETING ON 11/5/93 WITH EGGLESTON, ENGSTROM, KENDALL, KENNEDY, LINDSEY, LYONS, AND NUSSBAUM RE: WHITEWATER-RELATED MATTERS
UNDATED	JOEL KLEIN	UNDESIGNATED	NOTES RE: WHITEWATER INVESTMENT
3/1/94	ICKES	NUSSBAUM WILLIAMS PODESTA EGGLESTON	TRANSMITTAL MEMO ATTACHING 2/28/94 DRAFT MEMO FROM KENDALL TO CAPUTO RE: RESPONSE TO NEW YORK TIMES EDITORIAL ON WHITE HOUSE
11/10/93	DAVID KENDALL	UNDESIGNATED	DRAFT CHRONOLOGY RE: WHITEWATER MATTERS
7/24/94	UNDESIGNATED	UNDESIGNATED	FACSIMILE FROM CONGRESS RE: SUMMARY OF REPUBLICAN AND DEMOCRATIC STRATEGY ON CONTACTS ON CRIMINAL REFERRALS, INCLUDING REFERENCE TO HANDLING OF REFERRALS BY DEPARTMENT OF JUSTICE
6/19/94	SHERBURNE	UNDESIGNATED	DRAFTS OF CHRONOLOGY RE: INVESTIGATION OF MADISON GUARANTY, INCLUDING REFERENCE TO HANDLING OF REFERRALS BY DEPARTMENT OF JUSTICE
5/9/94	SHERBURNE	UNDESIGNATED	DRAFT NOTES RE: RTC CONTACTS, INCLUDING REFERENCE TO HANDLING OF REFERRALS BY DEPARTMENT OF JUSTICE
6/13/94 6/26/94	SHERBURNE	UNDESIGNATED	DRAFTS OF CHRONOLOGY RE: TREASURY/WHITE HOUSE CONTACTS, INCLUDING REFERENCE TO HANDLING OF REFERRALS BY DEPARTMENT OF JUSTICE
UNDATED	UNDESIGNATED	UNDESIGNATED	DRAFTS OF SUMMARY INFORMATION ABOUT HANDLING OF CRIMINAL REFERRALS BASED ON MATERIAL RELEASED BY REP. LEACH AND PRESS REPORTS, INCLUDING REFERENCE TO HANDLING OF REFERRALS BY DEPARTMENT OF JUSTICE
2/2/94	DAVID KENDALL	MAGGIE WILLIAMS	MEMO RE: REPLY TO NEWSWEEK ARTICLE ON WHITEWATER, ATTACHING ARTICLE AND DRAFT REPLY, INCLUDING NOTATIONS OF ICKES
3/2/94	QUINN	VICE PRESIDENT GORE	MEMO RE: VARIOUS SUBJECTS INCLUDING WHITE HOUSE-TREASURY CONTACTS



THE WHITE HOUSE
WASHINGTON

December 7, 1995

BY TELECOPY

Michael Chertoff, Special Counsel
Richard Ben-Veniste, Minority Special Counsel
United States Senate
Special Committee to Investigate Whitewater
Development Corporation and Related Matters
534 Dirksen Building
Washington, D.C. 20510-6075

Gentlemen:

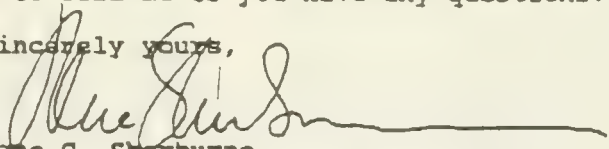
This letter is in response to the Chairman's letter of December 5, 1995, seeking information regarding the telephone number (202) 628-7087. We have learned that, from February 5, 1993, through January 20, 1994, the telephone number (202) 628-7087 was an unlisted trunk line that rang on the White House switchboard, which was at the time in Room 09 of the Old Executive Office Building. The number was installed as a bypass to the main White House switch, so that calls could be made from the White House in the event the main switch failed. The number was also used as a means to get through to the White House when the switchboard was overloaded, and may have been provided to certain individuals for that purpose.

We have no records reflecting with whom the caller to that number at 11:41 p.m., EDT, on July 20, 1993, was connected. However, we understand that Bill Burton remembers receiving a call in the Chief of Staff's office from Mrs. Clinton on the evening of July 20 and speaking with her about Vincent Foster's death.

In response to the Chairman's specific suggestion in the December 5 letter that the telephone number may have been used by the White House Communications Agency (WHCA) as a secure telephone line, WHCA has confirmed that the telephone number was not assigned to it.

Please feel free to call me if you have any questions.

Sincerely yours,



Jane C. Sharburne
Special Counsel to the President

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

MONDAY, DECEMBER 18, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE THE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 1:15 p.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

We are going to start at this point. I will withhold a number of issues regarding the outstanding subpoena to Mr. Kennedy, and I am going to withhold any comments on that until Senator Sarbanes, who is on his way here from another meeting, will be here shortly. But for the purposes of moving this, we'll start now.

I will ask Ms. Thomases, would you rise just for the purpose of taking the oath.

[Whereupon, Susan P. Thomases was called as a witness and, having first been duly sworn, was examined and testified as follows:]

The CHAIRMAN. Ms. Thomases, if you have a statement for the record, we would be pleased to receive it at this time.

SWORN TESTIMONY OF SUSAN P. THOMASES ATTORNEY AT LAW, WILLKIE FARR & GALLAGHER, NY

Ms. THOMASES. Mr. Chairman and Members of the Special Committee—

The CHAIRMAN. May I ask, Ms. Thomases, if you would bring that microphone in. It moves. Right from the base. Yes, that's it.

Ms. THOMASES. OK.

The CHAIRMAN. Senator Sarbanes is here, but we'll take your testimony, as I indicated, then deal with the question of subpoenas.

Ms. THOMASES. Mr. Chairman and Members of the Special Committee, first let me thank you for rescheduling my appearance today to accommodate my business travel last week.

Taking into account my interview with Committee counsel, this is my fourth appearance before this Committee. I have testified that I neither received from anyone nor gave anyone any instruc-

tions with respect to the handling of the documents in Vince Foster's office. I repeat that today.

I can also tell you that I had no knowledge that a box of documents from Vince Foster's office ever went to the White House residence. I know no one ever talked to me about it before it happened, and I certainly never saw or handled the box of documents.

My testimony before this Committee has been very publicly criticized and I believe unfairly. But I know I have told the truth.

Thank you.

Now I am ready to answer your questions.

The CHAIRMAN. Thank you.

We're going to suspend on that line just for a moment, as I had indicated prior, we were waiting for Senator Sarbanes who's coming from another meeting, to address the issue regarding the subpoena of William Kennedy.

The Committee served a subpoena on Mr. Kennedy's attorney, Paul Castellito, on December 8. Later, Mr. Castellito asserted that he was not authorized to accept service on behalf of Mr. Kennedy. This Committee has rejected this claim. That service of the first subpoena was entirely proper.

I believe that Mr. Kennedy and his lawyers have engaged in unfortunate delay tactics with this Committee. But to avoid any question, the Committee voted a new subpoena to Mr. Kennedy on Friday, December 15. That afternoon, the U.S. Marshal Service personally served Mr. Kennedy in Little Rock.

About an hour ago, the Committee received a letter from Mr. Castellito saying that Mr. Kennedy is refusing to comply with this new subpoena on the same grounds that he had previously asserted, the attorney-client privilege and the work-product doctrine.

The Chair has previously overruled these objections and now does so again. The reason set forth in my statement of December 14 is applicable also. Mr. Kennedy is hereby ordered and directed to comply with the Committee's subpoena by 3 p.m. today. So while this may seem technical in nature, it is something that we must do, and that is to deal with the question of whether or not there has been effective service.

Let me, at this time, indicate that there has been a great deal of speculation at the White House. Counsel has reached out to this Committee and/or to the Chairman with respect to the possibility of working out an arrangement whereby the notes would be produced.

This Committee is determined to get these notes because we are entitled to them. The American people are entitled to know the truth and the facts. That is our job. We have offered what we have to date in order to alleviate any questions about whether or not we were going beyond the scope. And I think we have done that for a period of weeks now. That is still out there.

Now let me say that it would appear to me, and this is my observation, that instead of making statements to the media and working at spin control, that the Counsel's Office would be far better advised to speak to both the Majority and the Minority counsel on any proposals that they have to date. And as of several minutes ago, when I spoke to Mr. Ben-Veniste and Mr. Chertoff, we have

not received any proposals from the Administration, from the White House Counsel, as it relates to any further proffer or offer.

If they do have one, as it relates to a manner by which to produce these documents, and understand we want the notes, and we are entitled to the notes, then I think they should spend less time spinning to the press about the possibilities and more time in terms of making these documents available.

We have laid out on the table an agreement that I believe protects their interests, but under no circumstances are we going to engage in this bargaining in the media.

Imagine my surprise when I am told by various people in the media, by the way, Senator, the White House is considering or has put out, or would like to make a suggestion to x, y, and z, in this case, a suggestion to the Special Counsel, Mr. Starr.

Let me say this to you. The White House has been dealing with Mr. Starr. They can put that offer. We have no objection to them putting any offer they have to Mr. Starr. Whatever they do with Mr. Starr, that is their business. It is not the concern of this Committee. The fact of the matter is, any offer that they have to make to Mr. Starr, they should make to him directly. Any offer they have to make to us, they should make to us. And they should make it to us first, instead of going out and having people spin this to the media. I believe they should spend more time in working to produce the notes that we are entitled to and that the American people are entitled to, and less time in spinning to the media.

And again, when I called staff over the weekend, Saturday, when I first heard of this, and then Sunday and as recently as several minutes ago, we have not had any communique from the White House Counsel's Office.

Now, if they want a particular action from Mr. Starr, and if they're requesting that, then they should speak to him. They should raise whatever subject they want with him. I think that's the appropriate way in which to handle it.

So we are no less determined to get the truth. The President has indicated that he did not see why he would raise the issue of privilege, and for it to come forth at this time and in this manner seems to me to be inconsistent with his previous statements. I would wish that he would keep his word. That word is to be cooperative and to produce those documents.

So that's where we stand at this time.

I know my colleague, Senator Sarbanes, will want to make some comment with respect to this.

Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, I'll be very brief.

I watched you do an interview with Wolf Blitzer over the weekend on CNN, and it seemed to me that the course you suggested there offered a chance of being a very positive and constructive course.

As I understood it, it would have been to have contacted Mr. Starr to indicate that the Committee would not treat the furnishing of these notes as a general waiver of the lawyer-client relationship,

and that Mr. Starr should take the same posture since he's also seeking the notes.

In fact, I think you said you certainly would urge him to go along with this. And it seems to me there might be considerable profit for the Committee and for the Senate, in fact, for moving the inquiry along if we got in touch with Mr. Starr and indicated that. So if we have both the Committee and the Independent Counsel agreeing that the furnishing of the notes does not constitute a general waiver of the lawyer-client relationship, it seems to me we have probably pretty well settled this thing, or we certainly have made a huge advance.

That would just be my own perception of it.

It seems to me that we ought to consider that kind of communication with the Office of the Independent Counsel. I thought that in that interview you had, that you were offering some ways through the maze, and it seemed to me we ought to, the Committee ought to pick up on those with respect to the Independent Counsel. And I would hope we could do that.

The CHAIRMAN. Without going into an extended discussion on this issue, and it is an important issue, I have now seen what is a pattern that comes from the White House. I think it is absolutely unacceptable for them to be putting out proposals or statements that would indicate that bona fide proposals have been put forth to us, when indeed they have not. That's just wrong. And for a professional staff and lawyers from the White House Counsel's Office to be engaged in this is absolutely unacceptable.

Now to date, they have not called, not been in touch with our staff, with this Senator, and I can give them an easy phone number, they can track me down at any time to advance this. That's just not right.

I assumed, when I was being interviewed, that they had put this in a manner of a proposal. Imagine when Wolf Blitzer tells me and others, well, Senator, we understand, you know, that they are putting this forth and indeed they have not. I operate on good faith, and indeed there has not been a proposal that's come forth. No one has contacted Mr. Chertoff, and to the best of my knowledge, I do not believe—I asked Mr. Ben-Veniste a few moments ago if he's had any contact.

And so for us to be responding to what is essentially press releases put out without anybody's telling the press who it is who's made this statement. I don't know whether Ms. Sherburne made the statement or somebody else, but obviously somebody from the White House. I wouldn't believe that credible reporters would be saying this if it didn't come from some responsible authority. It seems to me that we are being trivialized, and it's wrong. It is absolutely wrong.

I have to tell you, I don't know what to believe. I hear the President says he wants to tell the truth, he wants to cooperate, he's not going to raise privilege, then they raise privilege. We hear that they want to settle this, get us the notes on some reasonable conditions, and yet they don't come forth and do that. And that leads me to believe that we're being trifled with and this is nothing more than public relations.

Senator SARBANES. Mr. Chairman, wouldn't it serve a constructive purpose if we contacted Starr and see whether he's amenable to these conditions? That would be a way of apparently I guess breaking whatever logjam exists. It seems to me it would represent a constructive effort on the part of the Committee and may end up producing a very positive result.

The CHAIRMAN. It would seem to me that, at the very least, there should be an official communique from the White House that this is their proposal. We have not had any.

Ms. Sherburne is watching this right now, as well as 25 other people over at the White House. If they have a proposal, put it on the table. Let's stop playing games. I mean, this Committee learns things after they first give them requests that we make for documents, they give to the media first and then give it to the Committee. Now that's wrong. And this is the same kind of thing. I don't know whether they have a bona fide proposal. If they have a proposal, put it out, give it to us, and then we'll consider it.

Senator SARBANES. Well, we might be able to find the answer ourselves.

As I understand the White House position is they are willing to make the notes available but they wanted to be protected against the general waiver of the lawyer-client privilege. They have sought that from the Committee, and I think the Committee has offered it in a couple of conditions that were in the Sherburne letter.

The CHAIRMAN. That's right.

Senator SARBANES. Then the problem remains, how do you get protection from a general waiver with respect to others, and I guess in particular the Independent Counsel, since he apparently has also put forth a subpoena to get these notes. And if we can figure out an answer to that, it seems to me we can resolve this matter and move this process forward.

The CHAIRMAN. Let me say that we have reached out to Ms. Sherburne specifically as it relates to this issue. Saturday afternoon, Ms. Sherburne's office was called specifically to ascertain if they had anything to do on this proposal, and she failed to get back to us. I don't see her here today.

If there is a question that they have, they should certainly raise it with the Special Counsel. There's nothing precluding them from doing that. By the way, I have no objection, I have absolutely no objection to them seeking that. Now failing to do this, and I have to think this is just a new way of stalling for time, we will take this matter to the floor Wednesday.

Senator SARBANES. Well, Mr. Chairman, could I observe on the time issue, and I think it's important to establish this, if this matter goes to court, it's going to take months to resolve the issue. I don't think anyone contests that. If we can find a way of resolving it now, we'll have the notes in days or immediately. And it seems to me, I don't see any reason why Mr. Starr and the Office of the Independent Counsel shouldn't agree to the same sort of perception that the Committee has about the furnishing of these notes in terms of not constituting a general waiver. If we can work out that position with Starr, we may really advance this process. So instead of delay, it in fact will significantly expedite matters.

Because if we have to vote a Resolution and the counsel has to go to court, et cetera, et cetera, you're talking about an extended period. I don't want that, and I know you don't want that. It seems to me there's an opportunity here to really cut through all of this and move this matter forward. That's what I would encourage the Chairman to do. I mean, maybe we should put together the answer, so to speak. And if we can do that, it seems to me we've done a pretty constructive piece of work.

Watching that interview you did with Blitzer yesterday I guess led me to think down this path, and I thought the suggestions you were making there were pretty constructive and a way to move this thing along.

As I understand the White House position, they will make the notes available but they want to be protected against an assertion that they have made a general waiver of the lawyer-client privilege. I don't know anyone on this Committee, thus far at least, who has denied the lawyer-client privilege. In fact, some Members including Members on the other side have actually affirmatively conceded it. It seems to me if we can figure out a way to do that, then the Committee's done a good piece of work. And that may be the constructive role that we're in a position to play.

The CHAIRMAN. Senator Sarbanes, the Chairman has no objection to asking the Special Counsel to consider this request, no problem at all. I would ask him to consider this request, and advise him that we would be willing and we are willing to proceed along this line. That's a determination that he has to make. I have no problem with asking him.

Where I do have a problem is at this point in time, never even having, after the spin doctors at the White House, and that is a characterization that I make because I believe it's wrong, it is not dealing in good faith with this Committee when it puts out these little tidbits to the media and has not yet, at this time, made that request to us in any way. Now, if they were to make that request to us, I indicated, and I reiterate, I have no difficulty in advising the Special Counsel that this Committee is willing to accept this proffer and that we would ask him to consider the same. I have no ability to require him obviously.

The thing that strikes me again, and I say I think it's rather disingenuous on the part of the White House, is have they reached out to Special Counsel, are they inserting us in something where Special Counsel has already made a determination? I don't know. Have they entered into negotiations with the Special Counsel with respect to that?

So I have no difficulty, if they ask, and they say, as a condition, we would like the Special Counsel's cooperation, that we have written to the Special Counsel, that we have requested this of the Special Counsel. But I think to put this out in a manner that leaves people in a position where they can interpret any series of things is not the correct way to do it.

And hopefully by the time we end, maybe they'll come forth with a written proposal or call and say we are prepared or are now preparing a proposal to you that outlines basically that which we have given to some of the media.

But with no one to be held accountable to it, and there is no one, we can't say Ms. Sherburne said this. I doubt if people in the media are going to tell us who at the White House put this proposal forth. We don't know if it's bona fide. If it's bona fide, then come forth; don't leave it out there.

We are committed to working in a reasonable way to get the notes because we are entitled to them. And so I don't think it pays to belabor it anymore, but that's where we're at, and I think maybe essentially we're saying the same thing.

Senator SARBANES. Well, I would just close with this observation. I think there may be an opportunity for the Committee to find an answer to this. I don't know the inner workings at the White House on this issue, but the Committee——

The CHAIRMAN. I mean we're responding to something that has not been put forth except by way of the media where someone in the White House, obviously with some authority because they contacted a responsible source in the media, a White House correspondent, as a matter of fact, Wolf Blitzer, who represents CNN. It seems to me that they would have—this is Saturday, Sunday, Monday, in the 3 days of intervening, made that same contact with us and indicated that this was their condition or this is their proposal.

Senator SARBANES. Why don't we find the answer?

The CHAIRMAN. I'm asking the White House, I'm saying to the White House and/or their representatives, they have some people over here, do you have an offer to put forth to this Committee? If you do, put it forth.

Senator SARBANES. But the Committee could well say to the White House, look these are the undertakings we're prepared to make. We've talked to the Independent Counsel and the Independent Counsel is prepared to make these undertakings, and therefore, we think that the concerns that you've raised have been answered.

The CHAIRMAN. Yes, well.

Senator SARBANES. There are court cases where they went to court and the court threw it right back to the Congress and said you ought to make an extra effort to try to work this thing out.

The CHAIRMAN. Here's my question. How can we negotiate for the White House? If it is advising the Special Counsel, I have no problem in terms of doing that. If it is formally doing so by communication, by the Ranking Member and the Chairman, as it relates to what the status is, and asking for a speedy answer, I have no problem with doing that. But by gosh, I think at the very least, and I don't think I am standing on formality by saying, we are entitled from the White House to know exactly what it is. I don't want to be responding to a media inquiry and undertaking a course of action based upon an unnamed person from the White House saying, by the way, if they were able to convey this message to Judge Starr.

Now, what happens if Judge Starr says no? Do they then say, no, we're not going to go forward? Nobody's asked that.

So the point is we are entitled to those notes. The President has said he's not going to raise the issue of privilege. That's exactly what is taking place. We are willing to go as far as this Committee can but I can't say that we can guarantee the actions of others.

Senator SARBANES. I am not suggesting we guarantee it. I can't imagine why Judge Starr would say no. It seems to me the conditions are eminently reasonable. In fact, this Committee has indicated as much. If we establish that posture in terms of what our own position is, and if we are able to ascertain from Judge Starr that that's his position, it seems to me we've pretty well solved this matter.

The CHAIRMAN. Well, Judge Starr is in a position, and I am certain because I understand they have had people here, and I would not be a bit surprised if they are watching it to know that we are willing to yield and to concede, and indeed have offered several weeks ago exactly this point.

This Committee has never held out that there should be a general waiver, never done that. But we do contend we are entitled to the minutes.

Let's proceed.

Ms. Thomases, Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Ms. Thomases, good afternoon.

Do you have a copy of your letter or your counsel's letter of December 11, 1995?

Ms. THOMASES. No, I don't.

Mr. CHERTOFF. It's in the folder in front of you, I think.

[Pause.]

I would like you to turn to page 2 of that because I want to correct something on this.

Did you see this letter before it went out?

Ms. THOMASES. I don't believe I did.

Mr. CHERTOFF. On page 2, I want to read to you from the second paragraph. It says:

We note that to the extent these records shed any light on the specific matters under investigation, they appear to support Ms. Thomases' previous testimony that the White House visitors records may not be accurate. For example, Ms. Thomases' telephone records show a credit card call from Washington National Airport on July 27, 1993, at 8:44 p.m. while the White House visitors records purport to reflect Ms. Thomases departing the White House complex at 9:11 p.m.

Where did you get the idea that the White House records show that you left the residence on July 27 at 9:11 p.m.

Ms. THOMASES. That was what—as I said, I was not part of the drafting of this letter so——

Mr. CHERTOFF. So you don't know?

Ms. THOMASES. Could I consult my counsel, please?

Mr. CHERTOFF. OK, sure, if you want to.

[Discussion off the record.]

Ms. THOMASES. It was my lawyer's information.

Mr. CHERTOFF. I want to correct the record on this because if your counsel takes a look at the entry and exit logs, I think he has mixed up the days. The entry and exit log on the 27th of July shows that you entered at 2:50 p.m. in the afternoon and you departed at 8:20 p.m. in the evening, which in fact conforms exactly to the notion of your having gone to Washington National Airport about 24 minutes later to make a credit card call.

So there is, in fact, contrary to this letter, nothing that's inconsistent with the White House entry and exit records. I take it you have no information to the contrary, is that correct?

Ms. THOMASES. I have no information to the contrary.

Mr. CHERTOFF. Let me direct your attention to the 26th of—

Senator SARBANES. Does her attorney have any information to the contrary since it's his letter?

The CHAIRMAN. Mr. Romano, Senator Sarbanes raises the question, do you have any information to the contrary?

Mr. ROMANO. No, not personally. I'm looking at a different document.

The CHAIRMAN. Yes, it's obvious that what you did is confuse—OK, so as long as that's conceded.

Mr. CHERTOFF. So now we'll rehabilitate the White House record-keeping then.

Let me direct your attention to July 26th which was a Monday.

Ms. THOMASES. Excuse me, sir. That may be true but we were told also, and maybe you could clarify it for me, that the White House records show me leaving the White House at 4:30 p.m. on the 27th.

Mr. CHERTOFF. No, I think that actually what it shows, Ms. Thomases, is that you left from the second floor at 4:30 p.m., and then you were back up on the second floor at 8:19 p.m., so again that's internally consistent. And we'll put those up in a moment.

But let me take you back to the day before. That's Monday, July 26, which is, to put it in context, as you previously testified, the day in which you learned from Mr. Nussbaum by way of telephone when you were in New York, that approximately 27 pieces of paper, yellow pieces of paper had been found in Mr. Foster's briefcase. You recall that day, am I correct?

Ms. THOMASES. I had a call the 26th of July.

Mr. CHERTOFF. OK, you remember being told that by Mr. Nussbaum?

Ms. THOMASES. I don't know that I was told of the number of pieces of paper.

Mr. CHERTOFF. You remember being told that there was a writing of Mr. Foster that had been discovered?

Ms. THOMASES. Yes.

Mr. CHERTOFF. On that day, did you also get a call from Mr. Barnett?

Ms. THOMASES. I don't remember getting a call from Mr. Barnett.

Mr. CHERTOFF. Have you had an opportunity to examine some records which you furnished to us that indicated you received a message in your New York office from Mr. Barnett?

Ms. THOMASES. Yes.

Mr. CHERTOFF. That's ST 0000125. We'll put it up on the board. Now you don't remember this phone call?

Ms. THOMASES. No.

Mr. CHERTOFF. Did you know that Mr. Barnett was the Clintons' personal lawyer at this point in time?

Ms. THOMASES. He was their personal lawyer on some subjects.

Mr. CHERTOFF. Would it refresh your memory if I were to tell you that on the following day, Mr. Barnett appeared at the White

House to pick up a box of documents, at least some of which came from Mr. Foster's office the previous week?

Ms. THOMASES. Could you repeat the question?

Mr. CHERTOFF. Would it refresh your memory about this telephone call on Monday from Mr. Barnett, this message on Monday from Mr. Barnett, if I told you that the following day, Mr. Barnett was at the White House, pursuant to an arrangement that he had made with Maggie Williams, to pick up a box of documents that had been taken from Mr. Foster's office?

Ms. THOMASES. No.

Mr. CHERTOFF. Did you speak to Mr. Barnett on the 26th?

Ms. THOMASES. I don't believe I did.

Mr. CHERTOFF. Did you return his phone call?

Ms. THOMASES. I don't believe I did because—I don't believe I did.

Mr. CHERTOFF. Did you make plans on the 26th to go down and visit anybody in the White House on the next day, Tuesday?

Ms. THOMASES. On the 26th?

Mr. CHERTOFF. Yes.

Ms. THOMASES. I made plans to be in Washington on the 26th but not necessarily to go to the White House.

Mr. CHERTOFF. You say you made plans on the 26th to go down to the White House the next day, the 27th?

Ms. THOMASES. No, to go to Washington the next day.

Mr. CHERTOFF. I'm sorry, to go to Washington the next day.

Now you testified, last time you were here, that your normal day for going to Washington was a Wednesday, correct?

Ms. THOMASES. Yes.

Mr. CHERTOFF. You also testified that on this particular week, you had an important client meeting on Wednesday, you couldn't go down on Wednesday?

Ms. THOMASES. Yes.

Mr. CHERTOFF. What was the reason you decided to go down on Tuesday?

Ms. THOMASES. Because there were some things that I could have gotten done on Tuesday.

Mr. CHERTOFF. When you say things, are you talking about matters in your law practice?

Ms. THOMASES. Matters in my law practice.

Mr. CHERTOFF. Not to do with the White House?

Ms. THOMASES. Not to do with the White House.

Mr. CHERTOFF. Did you attempt on the 26th, Monday the 26th of July, to get in touch with Mrs. Clinton's scheduler in order to set up an appointment to see her the next day when you were in Washington?

Ms. THOMASES. I don't specifically recollect contacting Mrs. Clinton's scheduler.

Mr. CHERTOFF. Let me direct you to your telephone records that were provided to us with your letter or your counsel's letter of December 6, the last page, it's a bill from Cellular One and I think you have a copy in front of you if you want to look for it.

Just for the record, and to clarify for the Committee, these are the records we have received since your last appearance here in

November. It's got a fax line at the bottom 12/06/95 8:09 p.m. Do you have that?

Ms. THOMASES. Just a minute.

[Pause.]

Mr. ROMANO. Can you refer us to a page?

Mr. CHERTOFF. It's the last page, Mr. Romano, of the package that came with your letter of December 6. It's got Cellular One at the top. And you didn't put a Bates stamp on it, but it does have a fax line at the bottom, 12/06/95 8:09 p.m. It's page 8 of the fax.

[Pause.]

It seems to be ST 0000120. I guess I didn't see it on mine.

Ms. THOMASES. I called, yes, there's a call that I made to Patty Solis' office.

Mr. CHERTOFF. Patty Solis is the scheduler for the First Lady?

Ms. THOMASES. Yes.

Mr. CHERTOFF. You made that call at 5:24 p.m.?

Ms. THOMASES. Apparently.

Mr. CHERTOFF. What was the purpose of the call?

Ms. THOMASES. I don't remember.

Mr. CHERTOFF. Is that the person you call when you want to make an appointment to see the First Lady?

Ms. THOMASES. I call her about scheduling matters, and sometimes about when I want to see the First Lady.

Mr. CHERTOFF. What scheduling matters do you call Ms. Solis about other than the First Lady's?

Ms. THOMASES. I call her about the First Lady's scheduling matters but not always just about seeing the First lady.

Mr. CHERTOFF. What other kinds of things do you call her about?

Ms. THOMASES. Just to talk about general scheduling issues for the First Lady.

Mr. CHERTOFF. You mean the First Lady's schedule, not your schedule?

Ms. THOMASES. The First Lady's schedule.

Mr. CHERTOFF. She is the First Lady's scheduler?

Ms. THOMASES. Yes, she is.

Mr. CHERTOFF. And just to be clear about this, when you call her, you call her about questions or matters relating to the First Lady's schedule, is that correct?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Now did you call her on this Monday in order to set up an appointment to see the First Lady?

Ms. THOMASES. Not that I remember.

Mr. CHERTOFF. It's your testimony then that this call, as of this call, you did not have a plan to see the First Lady the next day, Tuesday, when you were in Washington?

Ms. THOMASES. As of this call, I did not have such a plan, or I don't remember having such a plan.

Mr. CHERTOFF. You don't remember having such a plan?

Ms. THOMASES. I don't remember having such a plan.

Mr. CHERTOFF. Do you remember having some other reason to call Ms. Solis?

Ms. THOMASES. I call Ms. Solis regularly.

Mr. CHERTOFF. On this day, did you have some other reason? This is again the week after Vincent Foster's death. Did you have

some other reason to call Ms. Solis apart from trying to set up an appointment to see the First Lady?

Ms. THOMASES. As I told you, I don't remember why I called Ms. Solis that day.

Mr. CHERTOFF. Now if you work down two calls to call number 7, there's a call to the White House Scheduling Office. Why did you call the White House Scheduling Office?

Ms. THOMASES. That may have been just to speak to my friend who, at that time, was the White House scheduler.

Mr. CHERTOFF. Who would that be?

Ms. THOMASES. Ricki Seidman.

Mr. CHERTOFF. Did Ricki Seidman call you back?

Ms. THOMASES. I don't remember.

Mr. CHERTOFF. I believe you have phone records in your possession that would indicate that she did call you back. Would you like to refresh your memory about that? Either she initiated the sequence of calls or she responded to the sequence of calls. Why don't you take a look at that?

I don't have a copy of it. I believe you have a copy in your unredacted version of some of the bills.

[Pause.]

Ms. THOMASES. My phone log shows a call from Ricki Seidman.

Mr. CHERTOFF. Was that a call that you made, was made in response or after your phone call, or was it made before your phone call?

Ms. THOMASES. I have no idea.

Mr. CHERTOFF. Was Ms. Seidman involved at this point in time in dealing with Whitewater issues?

Ms. THOMASES. No, not that I know of.

Mr. CHERTOFF. Did there come a time that she became involved in dealing with Whitewater issues?

Ms. THOMASES. I don't know.

Mr. CHERTOFF. You don't know?

Ms. THOMASES. No.

Mr. CHERTOFF. Did you also speak on that day to Mr. Berman, Michael Berman?

Ms. THOMASES. I don't remember speaking to him, but I speak to Michael Berman all the time.

Mr. CHERTOFF. Did you get a call from him on that day?

Ms. THOMASES. I don't remember getting a call from him.

Mr. CHERTOFF. Would you like to check your phone records for that day?

[Pause.]

Ms. THOMASES. I see a call, his name listed on my phone log.

Mr. CHERTOFF. Did you actually speak to him on that day?

Ms. THOMASES. I don't know if I spoke to him on that day.

Mr. CHERTOFF. And so I take it you're going to tell us you don't remember if you spoke to him, what you talked about?

Ms. THOMASES. No.

Mr. CHERTOFF. All right. So as of the close of that day, Monday, the 26th, you will agree with me that you did know that a writing in the hand of Vincent Foster had been found because you had been told that by Mr. Nussbaum, correct?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Your testimony is that by the close of that day, you intended to go to Washington the next day, Tuesday, the 27th, correct?

Ms. THOMASES. I presume so.

Mr. CHERTOFF. You presume so?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Is it your testimony that you didn't have a firm plan at that point to go the next day to Washington?

Ms. THOMASES. I don't know that I had a firm plan to go to Washington the next day.

Mr. CHERTOFF. It's your testimony that you had no prearrangement as of that Monday to see the First Lady?

Ms. THOMASES. I don't remember.

Mr. CHERTOFF. So your testimony is you don't know whether you called Ms. Solis in order to set up an appointment with the First Lady?

Ms. THOMASES. Correct.

Mr. CHERTOFF. You might have, you might not have?

Ms. THOMASES. No, I apparently called Ms. Solis from the records, but I have no idea what I discussed with her.

Mr. CHERTOFF. You might have discussed an appointment with the First Lady but you might not have?

Ms. THOMASES. That's correct.

Mr. CHERTOFF. And if you did, you don't remember why you did?

Ms. THOMASES. Exactly.

Mr. CHERTOFF. Now the following morning, you began in New York, correct?

Ms. THOMASES. I woke up in New York.

Mr. CHERTOFF. When did you come down to Washington?

Ms. THOMASES. I have no idea precisely.

Mr. CHERTOFF. Was it in the morning?

Ms. THOMASES. I don't remember precisely.

Mr. CHERTOFF. Did you check your diary, your daily diary, your calendar, before you came here, to refresh your memory?

Ms. THOMASES. Yes.

Mr. CHERTOFF. What did that indicate to you about when you may have left New York?

Ms. THOMASES. I don't know precisely when I left New York.

Mr. CHERTOFF. Was it in the morning?

Ms. THOMASES. I believe it was in the morning.

Mr. CHERTOFF. Did you stop at the office?

Ms. THOMASES. I don't remember.

Mr. CHERTOFF. Did you have any appointments scheduled in your calendar or diary for the 27th?

Ms. THOMASES. I had some—I don't remember whether I had anything scheduled for that date particularly.

Mr. CHERTOFF. I beg your pardon?

Ms. THOMASES. I mentally remember that I had a task I wanted to complete in anticipation for my Wednesday meeting.

Mr. CHERTOFF. Was that a task you were going to complete in New York?

Ms. THOMASES. Part in New York and part in Washington.

Mr. CHERTOFF. And without telling, I don't want to know the nature of the client, but can you generically describe what that task was? Was it a meeting, was it research, was it telephone calls?

Ms. THOMASES. It was clarifying an issue.

Mr. CHERTOFF. Involving legal research?

Ms. THOMASES. A little bit but mostly phone calls.

Mr. CHERTOFF. Was there some particular reason you were planning to go to Washington to make phone calls on Tuesday to clarify this matter?

Ms. THOMASES. The phone calls could have been made from either place, although the information that I kept I tended to keep in Washington, and would have had to have it faxed up to me in New York.

Mr. CHERTOFF. So what you're telling us is that as of the beginning or as of the end of the day on Monday, to the best of your recollection, you didn't have a compelling reason to go down to Washington the next day?

Ms. THOMASES. That's right.

Mr. CHERTOFF. And you don't remember having an appointment with the First Lady?

Ms. THOMASES. That's right.

Mr. CHERTOFF. Did you get a call or a message from the First Lady the following morning indicating that Hillary Clinton wants to see you today?

Ms. THOMASES. What, on the 27th?

Mr. CHERTOFF. The 27th, Tuesday.

[Pause.]

We put it up on the bulletin board. It's ST 0000126.

This is a copy of your standard message log, am I correct?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Is it kept by your assistant in your New York office?

Ms. THOMASES. Yes, it is.

Mr. CHERTOFF. This is headed July 27, is that correct?

Ms. THOMASES. Yes.

Mr. CHERTOFF. It indicates here a P. Solis, HRC wants to see you today. There's a little check mark after that. What does that denote?

Ms. THOMASES. That denotes that I got the message and the call was returned.

Mr. CHERTOFF. OK, tell us about why Mrs. Clinton reached out for you—let me withdraw the question.

We have been told by your lawyer this is the second call on the day's sheets, so it must have been an early call, a comparatively early call. But they tell us that they can't tell us exactly when the call came in.

You spoke to Mrs. Clinton?

Ms. THOMASES. I don't remember speaking to Mrs. Clinton at any time on the 27th. It's, I just don't remember.

Mr. CHERTOFF. Did you return the call?

Ms. THOMASES. I don't remember I returned the call. Obviously the call was returned to Patty Solis. It could have been returned by me, or it could have been returned by my assistant.

Mr. CHERTOFF. Now, this record is one that's maintained by your assistant and the secretary of your firm, right?

Ms. THOMASES. Yes.

Mr. CHERTOFF. It is her regular practice to make a record like this during the course of her duties, right?

Ms. THOMASES. That's right.

Mr. CHERTOFF. In fact, I take it it's an important part of her responsibility to keep an accurate track, correct?

Ms. THOMASES. Correct.

Mr. CHERTOFF. As we move along the record, just to be clear, where it says Patty Solis, under name, that is the name of the person who called your secretary, right?

Ms. THOMASES. Yes.

Mr. CHERTOFF. And then there's a space for a number, which is left blank, right?

Ms. THOMASES. Sometimes it's filled, in this case it's left blank.

Mr. CHERTOFF. OK, because you knew how to reach Patty Solis, right?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Now, read where it says "nature of call."

Ms. THOMASES. I see the message.

Mr. CHERTOFF. Can you read it to us?

Ms. THOMASES. HRC wants to see you today.

Mr. CHERTOFF. Then it's check marked to indicate that you returned the call?

Ms. THOMASES. Or that the call was returned on my behalf.

Mr. CHERTOFF. Now, let's be clear on this. As of the time you got this call, you were in New York, right?

Ms. THOMASES. I don't know.

Mr. CHERTOFF. Well, you think you were in Washington when this call came in?

Ms. THOMASES. I could have been en route.

Mr. CHERTOFF. In any case, the call came into your New York office, right?

Ms. THOMASES. Correct.

Mr. CHERTOFF. And your testimony is that you had not made a prearranged agreement to meet the First Lady on the 27th, right?

Ms. THOMASES. I don't recollect making such a prearrangement.

Mr. CHERTOFF. So we can conclude from that that the First Lady was reaching to you in New York. Let me withdraw the question and ask you this. You don't routinely keep the First Lady aware of your personal schedule, do you?

Ms. THOMASES. I sometimes tell her what I'm going to do.

Mr. CHERTOFF. But you don't—

Ms. THOMASES. But I don't routinely keep her aware of my personal schedule.

Mr. CHERTOFF. Certainly as it relates to your private law practice, right?

Ms. THOMASES. Correct.

Mr. CHERTOFF. So that from the standpoint of this record, what this record tells us, I am going to tell you where we're coming from on this, this record tells us that the First Lady puts a call into you in New York without any, to your knowledge, basis to believe you're coming down to Washington during that day, and she actu-

ally asks you specifically to come down in order to see her, which suggests that this is something that's pretty important to her.

Ms. THOMASES. Could you repeat the question?

Mr. CHERTOFF. I am setting up a context here for the next question. This call comes to you in the New York office. You have given us no reason to assume the First Lady knows you're coming down to Washington, and in fact, the fact that the call is placed to New York suggests the First Lady believes she's reaching you in New York.

Now, she calls you in New York or she has her scheduler call you in New York and asks you to come down to see her on that very day, which suggests a certain degree of urgency or importance because people usually don't call people in other cities and ask them to drop everything and come on down.

My question to you is, bearing that in mind and bearing in mind that this call was returned, what did the First Lady want to see you about?

Ms. THOMASES. I have no idea.

Mr. CHERTOFF. Did you see her?

Ms. THOMASES. I honestly do not remember seeing her.

Mr. CHERTOFF. When you came down to Washington, we have your phone records, which you've supplied us for this. There's a sequence of phone calls. First you made a call to Mark Geren which is around 11:33 a.m. He was the head of communications at that time for the White House?

Ms. THOMASES. I don't know what his title was at—I do not know what his title was at that time.

Mr. CHERTOFF. Did you know what he did, what his job was?

Ms. THOMASES. I don't know what his job was at that time.

Mr. CHERTOFF. Well, why did you call him?

Ms. THOMASES. I don't know that I called him in his job title. I may have called him just to touch base with him.

Mr. CHERTOFF. About what?

Ms. THOMASES. I don't know why I called him.

Mr. CHERTOFF. Are you telling us you don't know in 1993 what Mark Geren's job at the White House was?

Ms. THOMASES. Do you?

Mr. CHERTOFF. Yes, he was the Director of Communications.

Ms. THOMASES. In 1993?

Mr. CHERTOFF. Well, what was he?

Ms. THOMASES. I don't know.

Mr. CHERTOFF. You don't know.

Ms. THOMASES. That's why I am asking you.

Mr. CHERTOFF. So you're telling us you don't know what his job at the White House was?

Ms. THOMASES. In specifically 1993, no, I can't recollect that.

Mr. CHERTOFF. OK, then you called the main White House number at 12:20 p.m. and 12:35 p.m. Do you know why you made those calls?

Ms. THOMASES. Excuse me?

Mr. CHERTOFF. You called the main number at the White House. That's 456-1414, at 12:20 p.m. and at 12:35 p.m. Why did you make those phone calls?

Ms. THOMASES. I don't know.

Mr. CHERTOFF. Then you called Mr. McLarty's office, and you have a 9.5 minute phone call with that office. Did you talk to Mr. McLarty?

Ms. THOMASES. I don't know whether I did.

Mr. CHERTOFF. Do you know who you called?

Ms. THOMASES. I have no—I presume I called Mr. McLarty, but I have no idea.

Mr. CHERTOFF. Do you know why you called him?

Ms. THOMASES. I have no recollection.

Mr. CHERTOFF. Then you call back at 1 o'clock, and you have a 1.5 minute call with the same number. Do you know what that's about?

Ms. THOMASES. No.

Mr. CHERTOFF. Then you come to the White House and according to the records we have, you arrived there at around 3 o'clock. Do you remember coming to the White House?

Ms. THOMASES. No.

Mr. CHERTOFF. You come up to the second floor of the residence, remember that?

Ms. THOMASES. No.

Mr. CHERTOFF. I am going to put this up here. It's the next one, the next document. Right up there it says—you have a copy in front of you—it says July 27, 1993, up to the second floor 3:08 p.m., down at 4:31 p.m. And then up to the second floor at 8:19 p.m. and we have previously established that you leave the White House at approximately 8:20 p.m. What were you doing up on the second floor for an hour and a half?

Ms. THOMASES. I don't remember.

Mr. CHERTOFF. So this is within a week after Vincent Foster dies. You get a call from the First Lady that morning, a call to you in New York, not to your Washington office, to your New York office, that says the First Lady wants to see you today. You get on a plane, you come down. Maybe you were on a plane on your way down, and in fact you show up at the White House and you spend an hour and a half at the residence. Did you see the First Lady?

Ms. THOMASES. I don't really remember seeing the First Lady that day.

Mr. CHERTOFF. Did you see her that week?

Ms. THOMASES. I don't remember seeing her that week.

Mr. CHERTOFF. Did you—I'm sorry, I don't mean to cut you off.

Ms. THOMASES. I would have liked to have seen her, but I don't have any recollection of having seen her.

Mr. CHERTOFF. Did you have a discussion with her about insurance matters concerning the Foster family?

Ms. THOMASES. I know at some point I did. I just don't remember specifically having that conversation with her that day.

Mr. CHERTOFF. Do you have any recollection that she summoned you down from New York in order to have a discussion about the Foster insurance situation?

Ms. THOMASES. I have to tell you that I disagree with your characterization of Mrs. Clinton's summoning me down.

Mr. CHERTOFF. I'm sorry. But she asked you to come down?

Ms. THOMASES. I don't recollect her asking me to come down.

Mr. CHERTOFF. You had not seen, you had been down at the White House the week before, correct?

Ms. THOMASES. Correct.

Mr. CHERTOFF. You had not seen Mrs. Clinton there because she was in Little Rock, right?

Ms. THOMASES. Correct.

Mr. CHERTOFF. You did not go to the funeral, correct?

Ms. THOMASES. Yes.

Mr. CHERTOFF. So that this would have been the first occasion you saw Mrs. Clinton since her friend passed away. Is it your testimony you don't recall that?

Ms. THOMASES. I don't recall it. I know it's not credible to you, but I truly don't—

The CHAIRMAN. Well, when was the first time, Ms. Thomases, that you saw the First Lady? Now you had the shared grief, the shared loss. We hear you testifying how you reached out to people to see how they were doing. You come down, obviously the day before you speak to her scheduler, you don't recall that. But the notes indicate that, notes that we didn't get before, and the records do. The records that we get for the first time now indicate that the scheduler reached out to you and very clearly says that Mrs. Clinton would like to see you. You are in the White House on the second floor for an hour and a half and you are telling this Committee that you don't recall whether or not you met the First Lady? When is the first time you recall meeting the First Lady after the death of Vince Foster? When?

Ms. THOMASES. I can't tell you the precise date.

Mr. CHERTOFF. What did you talk about?

Senator BENNETT. Mr. Chairman, if you can't tell us the precise day, and I can understand that, can you tell us the circumstances? Was it in the White House? Was it in New York, or where did you have your first conversation with the First Lady after Vince Foster's death?

[Pause.]

Ms. THOMASES. I think that my first conversation with her after the death was the conversation that I had on the 20th, the week before. You mean my first conversation with her in her physical presence?

Senator BENNETT. Yes.

The CHAIRMAN. That's what we are asking.

Ms. THOMASES. I can't precisely remember.

Mr. CHERTOFF. Let me ask you. You made a point of saying in your opening statement that you did not instruct anybody to do anything with respect to the documents.

I want to ask you now, Ms. Thomases, to strike the word "instruction." Did you discuss with anybody at the White House in any way, shape or form, the handling of Vincent Foster's documents, that is to say, the documents that were in Vincent Foster's office at the time of his death?

Ms. THOMASES. You know that I had a conversation with Bernie Nussbaum about how he was going to handle the documents. I discussed that with him. He told me how he was going to do it the week before. That is the sole discussion I remember having on that subject.

Mr. CHERTOFF. Did you have a discussion with the First Lady about that subject?

Ms. THOMASES. I do not ever remember discussing the documents with the First Lady.

Mr. CHERTOFF. When you say you don't remember, are you unprepared to simply tell us you never had a discussion like that?

Ms. THOMASES. I'm saying that at the time proximate to Vince Foster's death I do not believe I had a conversation with Hillary Clinton about any documents.

Mr. CHERTOFF. You say at the time proximate to his death. Did you have a conversation with her at any time about the handling of the documents ever?

Ms. THOMASES. I might have in some subsequent times but I do not believe that I ever discussed them with her at that time, or anyone proximate to that time.

Mr. CHERTOFF. What was the discussion that you had with her at some other time about the documents?

Ms. THOMASES. It probably was in the context of these hearings.

Mr. CHERTOFF. You mean you've discussed it with her since the hearings have begun?

Ms. THOMASES. No, but you know, just when it was raised that I was coming down.

Mr. CHERTOFF. So you talked to her personally about your coming down to the hearings?

Ms. THOMASES. This was way back, before the first hearing.

Mr. CHERTOFF. Back in the summer?

Ms. THOMASES. Yes.

Mr. CHERTOFF. What was the discussion?

Ms. THOMASES. Just that I was going to have to come down, and that I didn't think that I had very much interesting to tell you, that you were still going to ask me the questions because you felt the need to ask me the questions.

Mr. CHERTOFF. Did you have a discussion with Mrs. Clinton before you came down to the first set of hearings about the telephone calls you two had had between each other during the days after Mr. Foster's death?

Ms. THOMASES. No, we did not discuss that.

Mr. CHERTOFF. Did you make an effort to refresh recollection about that?

Ms. THOMASES. No, I did not.

Mr. CHERTOFF. There came a point in time when you were asked to produce records concerning calls. Did you ask her whether she had any records that might help you to put together the sequence of calls on the days that we've been looking at?

Ms. THOMASES. No, I did not.

Mr. CHERTOFF. One of the points that we're struggling with here, Ms. Thomases, is the whole question of documents, trying to find documents. An issue has arisen about certain documents that involve not Whitewater specifically but the Madison Guaranty Bank and the work that was done by the Rose Law Firm at the Madison Guaranty Bank. You had worked on that issue during the course of the campaign, is that correct?

Ms. THOMASES. For a brief period.

Mr. CHERTOFF. You were aware of the fact that there was a point in time in 1992 during the campaign that there were questions being raised about the amount of work and the type of work that Mrs. Clinton had done on behalf of Madison Guaranty, correct?

Ms. THOMASES. Yes.

Mr. CHERTOFF. You understood that in connection with that, it would be of great interest and importance to know, to look at her time records, her time sheets, and her bills, correct?

Ms. THOMASES. Could you repeat that question?

Mr. CHERTOFF. You knew that in connection with determining the type of work and the amount of work that she had done for Madison, it would be very important to have access to Mrs. Clinton's time records and her bills as they related to the Madison work, correct?

Ms. THOMASES. I wouldn't quite characterize it that way.

Mr. CHERTOFF. Would you agree that it would be relevant to have the bills and to have the time records in order to ascertain what work Mrs. Clinton had done for Madison?

Ms. THOMASES. Yes.

Mr. CHERTOFF. And that was an issue in the campaign, right?

Ms. THOMASES. I wouldn't describe it as an issue in the campaign.

Mr. CHERTOFF. You were asked questions about it by a reporter, right?

Ms. THOMASES. Yes, a reporter asked me a question about it.

Mr. CHERTOFF. And you responded, right?

Ms. THOMASES. I don't know whether I specifically responded. I know that the question was asked.

Mr. CHERTOFF. You called Mr. Hubbell to ask him for information about the records of Mrs. Clinton's work on the Madison matter when she was at Rose?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Did Mr. Hubbell tell you that he had access to her time sheets?

Ms. THOMASES. I don't remember that he precisely told me that.

Mr. CHERTOFF. Did you ever see her time sheets?

Ms. THOMASES. No.

Mr. CHERTOFF. Did you ever see her bills?

Ms. THOMASES. No.

Mr. CHERTOFF. I have provided you with one sheet of your notes furnished to us, ST 0000032, which is part of your package, which relates to a telephone call you had with Webb Hubbell on 2/24/92.

The reason I am asking you this is that we have looked high and low, we've subpoenaed from the Rose Law Firm and from the RTC all billing records, and we've gotten very, very few billing records and we have very, very few time sheets. And we don't have any time sheets for Mrs. Clinton, so they seem to have disappeared. We're going to try to find out when the last time is that somebody knew where these things were.

This ST 0000032, is this your handwriting?

Ms. THOMASES. Yes, it is.

Mr. CHERTOFF. Do you see the entry 2/24/ TC with Webb Hubbell? Is that your handwriting?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Is that a record of a telephone call you had with Webb Hubbell on or about that date to get some information about the Rose Law Firm work for Madison?

Ms. THOMASES. Yes, it is. I mean, I don't know that it was just about the work for Madison.

Mr. CHERTOFF. But that was included, right?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Now, I want you to read down. First it has Arabic numeral 1, preferred stock offering 4/85. That refers to the attempt that the Madison Guaranty Bank was making to try to get authorization from Beverly Bassett Schaffer, to make their preferred stock offering in April 1985, correct?

Ms. THOMASES. Would you repeat that?

Mr. CHERTOFF. That refers to the effort Madison was making to try to get authority to issue preferred stock from Beverly Bassett Schaffer in the spring of 1985, correct?

Ms. THOMASES. Yes.

Mr. CHERTOFF. You knew there was a question about Mrs. Clinton's involvement in that effort to get approval for the preferred stock offering, correct?

Ms. THOMASES. I know that a reporter had a question.

Mr. CHERTOFF. The next item is broker-dealer summer 1985, correct? That's what the next entry is, right?

Ms. THOMASES. Which entry?

Mr. CHERTOFF. Where it says, 2. Broker-dealer summer 1985. You see broker-dealer summer of 1985? There's a little Arabic numeral 2 with a circle in your handwriting.

Ms. THOMASES. I don't see it on this particular page.

[Pause.]

OK.

Mr. CHERTOFF. That is your handwriting, right?

Ms. THOMASES. Yes.

Mr. CHERTOFF. That relates to an effort made to get permission for a subsidiary of Madison to act as a broker-dealer on this offering, correct?

Ms. THOMASES. I don't know that for sure.

Mr. CHERTOFF. You wrote this, though?

Ms. THOMASES. I did.

Mr. CHERTOFF. It continues on. Massey, and Massey was an associate then in 1984, or 1985, was a new associate at the firm, correct?

Ms. THOMASES. I didn't know him to be a new associate. I knew him to be an associate.

Mr. CHERTOFF. It said Massey had relationship with Latham and HC. That would be Hillary Clinton, correct?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Had relationship with McDougal, correct?

Ms. THOMASES. Yes, that's what I wrote.

Mr. CHERTOFF. This is what Hubbell's telling you?

Ms. THOMASES. Yes.

Mr. CHERTOFF. It goes on. Rick will say he had relationship with Latham and had a lot to do with getting the client in. She did all the billing. HC had numerous conferences with Latham, Massey,

and McDougal on both transactions. This is what Hubbell was telling you, is that right?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Now over to the left, there's a little notation that talks about time records. What does that say there? Acc. to time records?

Ms. THOMASES. This is my notation for according to time records.

Mr. CHERTOFF. So what Hubbell was telling you was based on the actual time records that he told you he had in his possession?

Ms. THOMASES. He did not specifically tell me that.

Mr. CHERTOFF. And how did you know to say according to time records?

Ms. THOMASES. Because he said according to time records.

Mr. CHERTOFF. So Hubbell said to you in this call, on February 1992, and you understand this is of critical importance because those time records are not around anymore; at least they haven't been produced to us?

Ms. THOMASES. You might also note that it has nothing to do with Vince Foster's death.

Mr. CHERTOFF. What it has to do with is where are these time records?

The CHAIRMAN. Do you believe you're scoring points?

Ms. THOMASES. No.

The CHAIRMAN. Because I tell you you're not.

Mr. CHERTOFF. If you will confine yourself to answering the questions here.

Your notes indicate that what Hubbell was telling you about Hillary Clinton having numerous conferences, that's your words, right, numerous conferences?

Ms. THOMASES. It was his words.

Mr. CHERTOFF. His words that you're recording?

Ms. THOMASES. That's right.

Mr. CHERTOFF. You certainly have no reason to be inaccurate in your copying down what Hubbell is telling you, right?

Ms. THOMASES. I copied what he told me.

Mr. CHERTOFF. And what Hubbell tells you is, according to the time records, which we don't seem to be able to get our hands on, but apparently he had in February 1992, HC, Hillary Clinton, had numerous conferences with Latham, Massey, and McDougal on both transactions. Do you remember this conversation?

Ms. THOMASES. Do I specifically remember it? No, all I have of it is notes.

Mr. CHERTOFF. Do you have reason to doubt the accuracy of your notes as recording what Mr. Hubbell told you?

Ms. THOMASES. No.

Mr. CHERTOFF. So I must ask you now, do you know whatever happened to the time records that Mr. Hubbell was relying upon when he spoke to you in February 1992?

Ms. THOMASES. I never saw them. I never got any precise information from them.

Mr. CHERTOFF. Did you ever hear what happened to them?

Ms. THOMASES. I never heard what happened to them.

Mr. CHERTOFF. Mr. Chairman, I see I've run out of time.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. If I might, I have just given the Chairman a copy of a communique that I received about 2 minutes ago. It is directed to the Senate Special Committee on Whitewater and Related Matters. Please hand-deliver to Chairman D'Amato and Senator Sarbanes.

Independent Counsel, Kenneth W. Starr, issued the following statement today from his office. This is faxed at 14:02. As I said, I received it 2 or 3 minutes ago.

The Senate Special Committee through Chairman D'Amato has inquired in public session today whether the Office of Independent Counsel would consider an apparent proposal by the White House to resolve issue with respect to the production of certain notes from a November 5, 1993 meeting. That meeting took place at the law offices of the private attorneys for the President and Mrs. Clinton.

As of 2 p.m. today, neither the White House nor private counsel to the Clintons has contacted this office with respect to any possible resolution of this matter.

And as of 2:15 p.m., neither has the White House or Special Counsel contacted this Committee in relationship to the supposed proposition that has been put forth and generated to the press.

Again, I would ask the White House Counsel: If they do have a proposal, that they go forward, as they have suggested to some of the media that they do. We stand ready to entertain it.

Mr. Chairman, the only point I was making is, I thought the Committee ought to contact the Independent Counsel. We ought to be able to come up with something.

The CHAIRMAN. Well, Senator, without their being a proffer of some kind in writing that we have received, how do we do that?

It seems to me that it is disingenuous to be putting out these offers to the media, as opposed to coming to the Committee and saying, look, yes, we're ready to sign off, if you're able, or if you would at least convey this request to Special Counsel.

Again, I will relay the request to Special Counsel. I think we have done it, so it's out there. If they are serious, let them go forward on it.

I guess we will take a brief respite.

Senator SARBANES. I want to reemphasize a point.

It seems to me the Committee could undertake to try to find a resolution of this matter. I know you indicated the difficulties of communicating through the media, and I agree with that. But it seems to me the Committee could talk to the Independent Counsel about this. We might find a resolution.

The CHAIRMAN. If indeed the White House is putting this forth seriously, and it's a genuine offer to help produce these notes, then I wish they would do it. And then we would be in a position to act on that.

What I am saying is, to date, I have had to rely on third parties, and I don't even know who at the White House did or did not make this possible offer through the media. I think again that's a highly unusual way to do things; to go to the media to suggest a possible compromise to this Committee—one which, by the way, we have signed off on as it relates to this Committee. I have no problem in stipulating that we certainly wouldn't constitute this as a general waiver. So really I think now it's up to them.

Senator SARBANES. If the Committee were then to ascertain from the Independent Counsel that they would sign off on those conditions, as well, then I think we would have changed the whole posture of this matter, and would be I think in a position to have a resolution of it. That's the only point I'm making. And it seems to me the Committee can play, as it were, a constructive role in resolving this matter.

The CHAIRMAN. We look to be constructive. But our resolve to go forward, certainly tempered with a bona fide proffer putting forth the notes—that's what I think the Committee's interested in. So really, the ball is in their court.

Senator Dodd.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Mr. Chairman, I'm curious. I appreciate we can go back and forth on this. I'm just wondering if it might not be advisable just to see, from your standpoint, maybe with Senator Sarbanes, whether a simple phone call sometimes can resolve these matters, instead of going back and forth.

The CHAIRMAN. Chris—excuse me, Senator Dodd—I'm going to ask at some point if both our counsel, Majority and Minority counsel, will get on the phone, call the White House, and say, "Do you really have something? And if you do, why don't you give it to us? Put something down on paper, and we'll pursue it."

Senator DODD. What about a call just to Starr?

The CHAIRMAN. I think we run into a very real problem without knowing, without having any indication what the White House is really proposing to this Committee, let alone to Starr.

I think we have to start off at the starting point. The starting point is, number one: What kind of offer are you making to the Committee? I heard it from the media, but it has not been communicated to this Committee yet. That's the troubling point.

Number two: If it is merely that the Committee would make this recommendation, I would be happy to make the recommendation. I would be happy to do it. I have said that. But, by gosh, we have to have it. I would feel like I don't believe we are capable of going forward without there being something that the White House has given to us by way of how to produce these notes, how we can break that stalemate.

So, I'm waiting for them, and I'm sure they know this; they're monitoring this. Maybe we'll send a letter to them and invite them to give us a written proposal. I'm not standing on ceremony. And I'll ask counsel together to draft a note of inquiry.

But I think it's highly unusual for us to go forward to another agency, let alone an Independent Counsel, to put ourselves in a position of bargaining for the White House, without there even being any kind of proffer or authorization. That's my point.

Senator SARBANES. It would be bargaining for ourselves, as I perceive it. We would in effect be playing a role as a Committee to try to resolve this matter.

Senator DODD. That's the point, Mr. Chairman. I wouldn't ever expect—that would be foolish for us to be negotiating for the White House. We have our own legitimate interests here, and one of the

complaints we're getting from the Executive Branch is that we can't have this because of the implications.

It seems to me we can answer that. Maybe we're in the best position to get an answer to that question.

The CHAIRMAN. Let me say this to you.

I'm going to ask that our deputy counsels, Mr. Giuffra and Mr. Wayne, if they would—and I don't mean to be speaking for the Minority—but let's suggest that they get on the phone, call the White House and see if they do have a proposal along the lines of that which was outlined to the media. Then I would feel comfortable in moving forward.

Senator DODD. I apologize. The witness is back.

Well, I was just going to mention The Wall Street Journal report today. I found to be tremendously encouraging—and I'm sure to all of the Committee—this Pillsbury Madison and Sutro Report on the RTC was, I think, very very helpful. I don't know if this article has been included in the record or not. But the headline, "Whitewater Report for RTC Discloses No Basis for Agency to Sue Clintons," is I think extremely worthwhile. The Clintons shouldn't be sued by the Resolution Trust Corporation over Whitewater Development and the related failure of Madison Guaranty, and goes on to suggest that they ought to terminate their Whitewater investigation. Did you have a discussion of that this morning?

The CHAIRMAN. We have not. Certainly, that will be put in the record, and obviously the report will be made part of the record.

Senator DODD. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste, Mr. Chairman.

Mr. BEN-VENISTE. Ms. Thomases, in view of the fact that we have had produced more detail regarding your activities on the 26th and 27th by way of these phone records, and logs of entry and exit from the White House, is your recollection refreshed in any respect on the issue of whether on the 27th of July, you had any conversation with Mrs. Clinton or anyone else about the files which had been in Vincent Foster's office, and which were removed from Mr. Foster's office and placed in the residence on their way to Williams & Connolly?

Ms. THOMASES. I have no recollection of ever having discussed that box of documents with Mrs. Clinton.

Mr. BEN-VENISTE. Put aside the box of documents per se. Does any of the additional material in any way refresh your recollection as to whether you had any discussion about the documents which had been in Mr. Foster's office?

Ms. THOMASES. As I said earlier today, I don't think that I ever discussed documents with Hillary Clinton in any time proximate to Vince Foster's death, and for at least more than a year after that.

Mr. BEN-VENISTE. And about that, your recollection is clear?

Ms. THOMASES. About that, my recollection is clear.

Mr. BEN-VENISTE. Mr. Chertoff asked you some questions relating to a telephone conversation you had with Mr. Hubbell back in February 1992, as reflected by notes which you have produced to this Committee, correct?

Ms. THOMASES. Yes.

Mr. BEN-VENISTE. In fairness to you, it should be said that we have not taken your deposition with respect to this subject matter area, have we?

Ms. THOMASES. That's correct.

Mr. BEN-VENISTE. And today, to my knowledge, is the first time that you have been questioned about either these notes or that subject matter?

Ms. THOMASES. Yes.

Mr. BEN-VENISTE. Can you tell us whether, in advance of coming to testify today, you received any notice that you would be questioned about this subject matter?

Ms. THOMASES. No, I received no such notice. I, personally, received no such notice.

Mr. BEN-VENISTE. Did you nevertheless prepare yourself to respond to questions about this subject matter today?

Ms. THOMASES. No, I didn't prepare myself to respond to this subject matter.

Mr. BEN-VENISTE. I have nothing further. We would yield our time back.

The CHAIRMAN. Thank you.

Mr. Chertoff.

Mr. CHERTOFF. Ms. Thomases, we're going to come back to the issue of the bills, but I want to focus briefly on the issue of the 22nd.

Senator BENNETT. Mr. Chairman, before we leave the bills——

The CHAIRMAN. Certainly.

Senator Bennett.

OPENING COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Ms. Thomases, you may or may not have followed Webb Hubbell's testimony when he was here. He brought—or there was brought, more accurately—with him a series of summaries of the billing of the Rose Law Firm on these various matters. And Mrs. Clinton has sworn in an affidavit that she had little or nothing to do with legal matters dealing with Madison Guaranty.

The summary of the billing that was here would belie that statement. From the billing pattern, it was clear to me as a layman that the beginning of the matters were all handled by Mr. Massey under Mrs. Clinton's supervision, because the bulk of the billings were in his name. She would occasionally drop in on the billing summary for a little bit of billing. Then there was a relatively dramatic shift, and his name virtually disappeared from the billing records, and it became all HRC all the way through, and she ran up the bills in a fairly substantial fashion.

As I pointed out to Mr. Hubbell, I'm not a lawyer, so I've never made out a billing sheet. But I've paid a lot of lawyers' bills, and I've learned to read them. And it was fairly clear to me that the principle lawyer handling this matter was Mrs. Clinton, which is in direct opposition to her sworn statement in this area.

Mr. Hubbell said to me, and I'm paraphrasing, "Well, I'm sorry I'm not articulate enough to get you to understand what these billing sheets really are saying. They're not really saying what you think they are saying." And the strong implication that I took from

that exchange was that if we could get to the actual records, we could clear up this discrepancy.

Now, Mr. Chertoff pointed out to Mr. Hubbell that on their face, the records were saying one of two things. Number one, either my interpretation was correct, and Mrs. Clinton was the primary lawyer handling this; or number two, that some kind of a sweetheart deal had been worked out with Madison whereby Mrs. Clinton would be compensated for more than her usual hourly rate for the amount of time she spent on this matter, that would therefore allow her billings to go way up, even though she didn't spend that much time there.

Mr. Hubbell insisted that the second explanation was clearly not true; that Mrs. Clinton never was involved in any inflation of her billing rate on this or any other matter. Which leaves us with the first interpretation, which I find very clear, subject to contradiction by billing sheets.

That's why Mr. Chertoff, on behalf of the Committee, is trying to find the actual time records. And that's why we are having this discussion.

You are a lawyer. You fill out time sheets. You are a close friend of Mrs. Clinton. If you were confronted—and if you wish, we can give you the exact sheets; I'm sure we can pull them out, but—with this pattern, whereby the name that appears for the first 5 or 6 months is primarily Mr. Massey, with an occasional reference from Mrs. Clinton, and then for the next 5 months Mr. Massey disappears and overwhelmingly it's Mrs. Clinton's name that appears there, and it's in Mrs. Clinton's name that the bills are submitted, could you give me any scenario that does not conform with my assumption, which says that she became the lead attorney on this issue—and indeed, was guiding it all the way through?

Ms. THOMASES. What's the question?

Senator BENNETT. I realize it's difficult, because you are not a member of the firm. And if you say, "No, I can't," why that's fine. But, you are a lawyer. You do handle billing sheets. The question is this. Am I reasonably correct in assuming from the pattern of billing that was outlined in that summary that Mrs. Clinton was the lead attorney on this issue?

Ms. THOMASES. I have not seen the billing sheets, and I would not want to jump to that conclusion.

Senator BENNETT. I don't know that we need to pursue it, but that's why I'm following Mr. Chertoff's questions in this area with such interest.

Mr. Chairman, I remain unsatisfied on this point. And it may well be, if those billing records have disappeared, that I'll remain unsatisfied forever.

Thank you. I apologize for the interruption.

The CHAIRMAN. That's quite all right.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Just to focus on this billing issue for a moment, Ms. Thomases, you understood at the time of the campaign that the significance of the issue being raised by the reporter was whether, in fact, Mrs. Clinton was doing a significant amount of work on a sensitive regulatory matter on behalf of the bank with respect to an official that

had been appointed by her husband, who was then the Governor. Correct?

Ms. THOMASES. Yes.

Mr. CHERTOFF. She had taken the position publicly that she had deliberately taken herself out of doing any regulatory work that would cause her to interact with her husband's appointees, correct?

Ms. THOMASES. I think she attempted to do that.

Mr. CHERTOFF. That's what she said she had done, right?

Ms. THOMASES. That's right.

Mr. CHERTOFF. Obviously, if it were to be demonstrated that she was, in fact, interceding on behalf of a client with a regulator appointed by Governor Clinton, that would have—shall we say—been at odds with the position she was taking publicly, to say the least. Correct?

Ms. THOMASES. I don't think I'm prepared to comment on that.

Mr. CHERTOFF. This is exactly the issue you were asked to look into in the spring of 1992, which led to your conversation with Mr. Hubbell. Correct?

Ms. THOMASES. Yes, except I never got the facts. If you look at the same page that you showed me, I never got the answer to the question of how many hours Mr. Massey had versus how many hours Hillary Clinton had.

Mr. CHERTOFF. Why couldn't you get the answer to that question?

Ms. THOMASES. No one ever gave me the records in order to do that.

Mr. CHERTOFF. So we now have this recap of fees which actually indicates, as Senator Bennett said, that there was actually a quite substantial amount of time billed overall to Madison matters.

But let me get back to the earlier part here, where Mr. Hubbell is talking to you about information that he is learning according to the time records. That's your note, according to the time records, which you've acknowledged to us is what Hubbell told you, correct?

Ms. THOMASES. Correct.

Mr. CHERTOFF. He indicates that Hillary Clinton had numerous conferences with Latham, Massey, and McDougal on both transactions. She reviewed some documents. She had one TC—that's a telephone call, right?—in 4/85, at the beginning of the deal, with Bev. Those are your notes of what Mr. Hubbell told you. Is that correct?

Ms. THOMASES. Yes.

Mr. CHERTOFF. You understood at the time that if her billing records contained this information, it would undercut the position being publicly taken by Mrs. Clinton that she, in fact, had not done any work on this deal at all. Is that correct?

Ms. THOMASES. Yes, but I never saw the billing records.

Mr. CHERTOFF. So you had Hubbell tell you about these numerous conferences, and that you have in your notes, right?

Ms. THOMASES. Yes, I have in my notes—I have what you see in front of you.

Mr. CHERTOFF. You will agree with me that Mr. Hubbell told you that he was giving you this information based on time records that he had, but you were not shown.

Ms. THOMASES. I wasn't with him. We were on the phone.

Mr. CHERTOFF. He was telling you about time records. You didn't get to see them.

Ms. THOMASES. Correct.

Mr. CHERTOFF. You will agree with me that time records showing numerous conferences on these transactions would be at odds with statements by Mrs. Clinton to the effect that she did no work on this matter, or very little work on this matter. Correct?

Ms. THOMASES. Without seeing the time records, I wouldn't move to that conclusion.

Mr. CHERTOFF. You would agree that "numerous conferences" is inconsistent with "I did nothing" or "I had nothing to do with the transaction" right?

Ms. THOMASES. As I said, I have not seen the time records.

Mr. CHERTOFF. Did you ever ask to see the time records?

Ms. THOMASES. No.

Mr. CHERTOFF. Why not?

Ms. THOMASES. I asked for the hours. The number that you see at the bottom is precisely what I asked for.

Mr. CHERTOFF. Did Mr. Hubbell not get back to you on that?

Ms. THOMASES. Apparently not, because I am sure that I would have inserted them, because that was my habit when I asked questions and taking notes. And if I had ever gotten the answer, I would have gone back and inserted them.

Mr. CHERTOFF. Did you know that Madison files, original Madison files, were removed from the Rose Law Firm at the time the Clintons were packing to leave Little Rock to go to Washington?

Ms. THOMASES. No, I did not know that.

Mr. CHERTOFF. Do you know of any reason why the files would be removed?

Ms. THOMASES. I have no idea.

Mr. CHERTOFF. In April 1993, were you involved at all in any work being done at the White House in connection with the Rose Law Firm billings?

Ms. THOMASES. No, I did not.

Mr. CHERTOFF. Were you aware of such work?

Ms. THOMASES. No.

Mr. CHERTOFF. I see I'm out of time again, Mr. Chairman.

The Chairman. Let me ask, if I might. If you look to that next to the last—would you put up—look to the next to the last groupings. I see one grouping, two, three, starting with "Rose Firm."

Ms. THOMASES. Yes, I see it.

The CHAIRMAN. What's that next word?

Ms. THOMASES. "Prohibited."

The CHAIRMAN. "From"—could you read that?

Ms. THOMASES. "Seeing."

The CHAIRMAN. "Examiner's report"?

Ms. THOMASES. Yes.

The CHAIRMAN. What was that about?

Ms. THOMASES. I'm not sure.

The CHAIRMAN. Do you have the rest of that? "Rose . . ."—what is that? "Called?"

Ms. THOMASES. No, "relied."

The CHAIRMAN. Would you read it?

Ms. THOMASES. "Rose relied on certified audit report."

The CHAIRMAN. Would you know what report that was?

Ms. THOMASES. Not specifically.

The CHAIRMAN. Would you—

Mr. CHERTOFF. Was that the Frost report?

Ms. THOMASES. I have no idea.

Mr. CHERTOFF. Was it a fact that one of the issues you were concerned about was whether there was a conflict of interest when the Rose Law Firm allowed itself to be retained by the RTC to sue Frost, when in fact they might be relying on the Frost report to explain why it is they didn't know about some of the problems at Madison when they were trying to get the stock issued?

Ms. THOMASES. I was not aware of that issue.

The CHAIRMAN. Would you read the rest?

Ms. THOMASES. "RTC paid Rose Law Firm \$240,000 in 1991."

The CHAIRMAN. Go ahead.

Mr. CHERTOFF. Isn't that about the very billing conflict of interest issue with the RTC I just asked you about?

Ms. THOMASES. That was what Hubbell told me.

Mr. CHERTOFF. But you were asking about it because you understood that one of the issues that had arisen out of this whole question of representation of Madison was not only was there a problem, or were there issues involved with the original representation, but that when Rose got hired by the RTC to sue Frost, that was a separate new conflict of interest. You understood that was an issue?

Ms. THOMASES. I was not aware of those issues.

The CHAIRMAN. Would you continue to read that?

In other words, RTC paid Rose Law Firm \$240,000 in 1991. "But . . ."—would you continue from there? "But . . ."—

Ms. THOMASES. ". . . HC was billing partner, and attended conferences. He . . ."—and I think the "he" refers to Massey—". . . he has a major role, blank hours . . ."—I never got the number to fill in that blank—". . . versus HC's blank hours."

The CHAIRMAN. So back then, you were concerned with how much work and how much time Mrs. Clinton put in as it relates to billing Madison. Is that correct?

Ms. THOMASES. I wouldn't necessarily use the word "concerned." I was trying to determine it.

The CHAIRMAN. If you don't say "concerned, you were trying to determine," what are we talking about? You spent an awful lot of time in this memo as it relates to the conversation, as it relates to what work she did, that she had numerous conferences. And then it comes down to the question of how many hours she put in there. Now, when we look for the billing hours, we can't find them. Do you understand why the Committee would be interested?

Ms. THOMASES. I can understand why you say you're interested. But I, as I showed you, I never found the answer to that question, either.

The CHAIRMAN. To the hours, sure. But the question is, and when counsel raised it to you before, he said, you know, isn't it a fact that this is in response to the questions that the media had raised, and that Mrs. Clinton said she did little if any work on these matters. Isn't that correct? That's what she claimed.

Ms. THOMASES. Yes.

The CHAIRMAN. So therefore, if indeed as the notes suggest, absent the hours where Mr. Hubbell said that she attended numerous conferences—and indeed the records, which you have not seen—demonstrates that she was, during a period of time, the main biller; this would then bring into conflict that statement which Mrs. Clinton had made. And that was an area of concern, wasn't it? Was that an area of concern?

Ms. THOMASES. What's the question?

The CHAIRMAN. I asked, was it an area of concern that you would try to ascertain whether or not, indeed, Mrs. Clinton had done substantial work on these matters, as opposed to the statements that were made that she did little, if any, on these matters relating to Madison?

Ms. THOMASES. I was looking for facts. I was not making conclusions.

The CHAIRMAN. But that was a matter of concern, wasn't it?

Ms. THOMASES. That was a matter this reporter was interested in, yes.

The CHAIRMAN. Who was interested in?

Ms. THOMASES. The reporter.

The CHAIRMAN. And you were interested in. It was a matter of concern.

Ms. THOMASES. I wouldn't necessarily characterize it that way.

The CHAIRMAN. You certainly spent a good deal of time on this matter, didn't you?

Ms. THOMASES. No, the truth is I did not.

The CHAIRMAN. It was inconsequential?

Ms. THOMASES. I spent a maximum of 2 weeks time to put together this information.

The CHAIRMAN. Wouldn't that be considered, 2 weeks, a matter of concern?

Ms. THOMASES. That wasn't the only thing I did for—

The CHAIRMAN. I don't mean to be splitting hairs. But if you say you spent 2 weeks on this, it would seem to me that that would be a matter of some very real concern.

Now, I have provided the emphasis. I have no further questions. Senator Sarbanes.

[No response.]

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

This is going to be important, because we're going to no doubt have Mr. Hubbell back. These notes were your contemporaneous notes from your telephone call with Mr. Hubbell. Is that correct?

Ms. THOMASES. Yes.

Mr. CHERTOFF. You took them down as accurately as you possibly could. Correct?

Ms. THOMASES. Correct.

Mr. CHERTOFF. The references to "Bev" in the notes, by the way, are Beverly Bassett Schaffer?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Did you ever speak to Beverly Bassett Schaffer about her dealing with Madison or the preferred stock issuance?

Ms. THOMASES. I don't believe so.

Mr. CHERTOFF. Did you talk to her during the campaign about it?

Ms. THOMASES. I don't think I did.

Mr. CHERTOFF. Did you have occasion to inquire during the course of the campaign, or afterwards, how it is that the Rose Law Firm came to be retained by Madison Guaranty?

Ms. THOMASES. No.

Mr. CHERTOFF. No?

Ms. THOMASES. No.

Mr. CHERTOFF. Did you ever learn how they came to be retained by Madison Guaranty—that is to say, the Rose Law Firm?

Ms. THOMASES. I was told at the time that I recorded these notes that Latham, with Massey, had brought the client to the firm.

Mr. CHERTOFF. When Mr. Hubbell says here, "Massey had relationship with Latham, and HC had relationship with McDougal," wasn't he, in fact, telling you that part of what moved this relationship forward with this retainer was the fact that Hillary Clinton had a relationship with Mr. McDougal?

Ms. THOMASES. That's what Webb Hubbell said.

Mr. CHERTOFF. Did you learn when it is that the Madison Guaranty Bank, in fact, retained the Rose Law Firm?

Ms. THOMASES. I don't know.

Mr. CHERTOFF. Was it well in advance of April 1985 when they actually—the firm actually began performing services?

Ms. THOMASES. I don't know.

Mr. CHERTOFF. I want to read you a portion of Mrs. Clinton's affidavit that was filed in 1994 on the 16th day of September before the FDIC, Office of Inspector General. And in particular—we'll give you a copy of that. Again, I want to make sure. You had expressed some uncertainty as to whether this was a matter of concern to you during the campaign.

Senator SARBANES. What page, Michael?

Mr. CHERTOFF. This is page 5, and the question is, "Describe your involvement with Rose's representation of Madison before the Arkansas Securities Department, including but not limited to details of work you performed in 1985 for Madison regarding obtaining approval from the ASD to issue preferred stock."

[Pause.]

Ms. THOMASES. Excuse me. Where are we reading from?

Mr. CHERTOFF. We may have given you the wrong document. Excuse me; we'll get it to you.

[Pause.]

I apologize. We have the wrong document in front of you. While we wait, let me turn back to the phone records. I want to be quite clear.

On the 27th of July 1993—and, Ms. Thomases, we're waiting to get you the correct document. Let me bring you back to the phone calls. I think it probably would be useful if you gave me your attention on this.

On the 27th of July, as of that point in time, you had not, before that date—you had not seen Mrs. Clinton in person after Mr. Foster's death. Is that correct?

Ms. THOMASES. Yes.

Mr. CHERTOFF. As of that date, you had learned that there was a writing of Vincent Foster that appeared to have some relevance to why he might have taken his life, correct?

Ms. THOMASES. I learned that on the 26th.

Mr. CHERTOFF. So you knew it on the 27th?

Ms. THOMASES. Yes.

Mr. CHERTOFF. And you would agree with me that if you saw the First Lady on the 27th, the first time you saw her after the death, and after you learned of the writing, you would likely have discussed that with her. Is that correct?

Ms. THOMASES. Not necessarily.

Mr. CHERTOFF. So it's your recollection that you may have talked to the First Lady for the first time after the death, and not raised the issue of this writing?

Ms. THOMASES. As I said to you, I don't recollect actually seeing her on that date.

Mr. CHERTOFF. What about afterwards? At any time after you learned there was a writing in Vincent Foster's own handwriting that appeared to be relevant to why he took his life, did you discuss it with Mrs. Clinton?

Ms. THOMASES. I don't know that Hillary Clinton and I have ever discussed that writing.

Mr. CHERTOFF. In all the going back and forth we've heard about with comforting interns and talking to people who were volunteers working in Maggie Williams' office, and being concerned about all these issues, is it your testimony that you don't think you've ever discussed with Mrs. Clinton the writing which appears to be the closest evidence we have of what was in Vincent Foster's state of mind at the time he took his life?

Ms. THOMASES. I don't believe that I have ever really discussed it with her.

The CHAIRMAN. Ms. Thomases, this is what troubles, I think, some of us. Given your close relationship with the First Lady, given the fact that in a number of instances she has relied upon you, given the fact that you are a key advisor, acknowledged—let's not split hairs about whether you're the juice, or—you, acknowledged, are a key advisor.

Given the fact that, right after the death of Vince Foster, there's a number of communications between yourself, between the First Lady, between Maggie Williams—without even going into the nature of those conversations, given the fact that on the 26th for the first time, they find this note that everybody's looking for; they're looking for some reason, and it is brought forward. You have a number of conversations with people at the White House. You have a scheduler who the following day says—well, that you have a conversation with on the 26th, but on the following day, you don't recall what the conversation was about.

But on the following day, there is a record in your office that indicates that the First Lady wants to see you. And we find you on that day when she wants to see you in the White House. We find you upstairs for almost an hour and a half in the residence. Mrs. Clinton is there.

Do you think it's credible or believable to think that you didn't even see the First Lady, after you hadn't seen her after this tragedy of events? Now, do you believe that?

Ms. THOMASES. I believe it's possible.

The CHAIRMAN. Would you believe someone who were to tell you the same thing? Would you really? Would you accept that as being credible?

Ms. THOMASES. Are you asking a question?

The CHAIRMAN. Yes.

Ms. THOMASES. Do you want me to answer?

The CHAIRMAN. Yes.

Ms. THOMASES. I do not remember seeing Hillary Clinton. But I think, given the facts, I probably did see her. But I honestly do not remember, and I have tried and tried and tried to create a recollection.

The CHAIRMAN. You were upstairs in the residence for an hour and a half. Mrs. Clinton is there. Why wouldn't you see her?

Mrs. Clinton's secretary, her scheduler, reaches out, and says that she wants to see you. Do you understand why it's so difficult, and not credible, to believe that you didn't see her? And the fact that you say that you don't recall—this is a rather significant time. It's a significant time in the discovery of a note. It's a significant time in the fact that two dear friends who have shared and grieved, as you did with Mrs. Clinton, met for the first time. And you wouldn't recall? That's the problem we have.

Ms. THOMASES. Senator, I have tried to always tell you things that I do recall.

The CHAIRMAN. OK.

Ms. THOMASES. It would have been convenient for me to recall that. But I do not recall it.

The CHAIRMAN. Does Ms. Thomases have that document now, Senator Sarbanes?

Senator SARBANES. I believe she does.

The CHAIRMAN. Go ahead.

Mr. CHERTOFF. Before we get to that document, though, still on the issue of this day of the 27th.

You get a message which you acknowledge—your checkoff indicates—was returned from Ms. Solis, indicating that the First Lady wants to see you. Did you call her back using your cell phone? Did she call you using your cell phone as the place to which she put the call?

Ms. THOMASES. I do not remember having had interaction with Patty Solis. The records show that either myself or my secretary spoke to her.

Mr. CHERTOFF. Now, let me take you back even a few days earlier, to the 22nd. We have previously established that you received a call from the First Lady shortly before 8 o'clock your time, our time in Washington, on that day; which was the day in which Bernie Nussbaum told the Department of Justice they would not be allowed to look at the documents. That was about a 4-minute telephone call.

Since your last testimony, we have received additional phone records, which indicate that you put a return call back to the First Lady at approximately 8:25 a.m., after you had made at least an

effort to reach Mr. Nussbaum at 8:01 a.m. Now, does that refresh your memory about your conversations with the First Lady that morning?

Ms. THOMASES. I told you originally that I remember having a conversation with the First Lady. I only remember having one contact with her that morning, and I don't know—the record shows that I called her, and I may have called her in response to a call that she put in to me that I did not specifically receive.

Mr. CHERTOFF. Well, the first call, the one that went in to you, we have established previously was a 3- or 4-minute telephone call, and this was to your hotel. Do you have any doubt in your mind now that you actually talked to her at that period of time?

Ms. THOMASES. I don't doubt that I talked to her that morning. But I have a doubt about responding to her call to me. I believe I called her, probably called her back.

Mr. CHERTOFF. She calls you. You have a 3-minute conversation.

Ms. THOMASES. She has a 3-minute conversation with the hotel. It's not a hotel. It's a bed and breakfast.

Mr. CHERTOFF. It has maybe less than a dozen rooms, would you agree?

Ms. THOMASES. Yes.

Mr. CHERTOFF. And you believe that she spent 3 minutes on the phone with the hotel clerk?

Ms. THOMASES. I don't know who she spent time, or whether she talked to them, or whether it took the hotel clerk that long to find out that I wasn't perhaps available.

The CHAIRMAN. Let me ask you, Ms. Thomases. Where were you when you called Bernie Nussbaum?

Ms. THOMASES. In my room.

The CHAIRMAN. Well, 1 minute after Mrs. Clinton calls your room, 1 minute after that 3-minute conversation is called, is recorded, it's recorded that you called Bernie Nussbaum. Are you saying now that you were in your room, you didn't receive the call, the hotel operator did, and exactly a minute later, you reached out and called Mr. Nussbaum?

Ms. THOMASES. I am telling you that I remember one call with Mrs. Clinton.

The CHAIRMAN. No, you were going further. You were saying—you were suggesting to this Committee that the telephone call was received by the hotel. You said just now that you were in your room. You said that you called Mr. Nussbaum.

Let me suggest to you that any reasonable interpretation, when you look at the records—7:55 a.m., 7:57 to 8 a.m., the Rodham residence, call from the Rodham residence to Susan Thomases' hotel. One minute thereafter, Susan Thomases' call to Bernie Nussbaum on his pager.

Now let me ask you something. If you said that you were in your hotel room, and you called Bernie Nussbaum from there, are you suggesting that the minute before, or 3 minutes before, that the hotel had received the call, you didn't get the call, but you just—right after you hung up, or right after someone hung up on Mrs. Clinton—called Bernie Nussbaum?

That's not believable. It's not credible. And for a distinguished person like yourself, an attorney, to come in here and suggest it,

it even adds more to the incredulity of it. It's just not right. You don't want to really say that, do you? Do you want to stick to that?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Then, in the afternoon, at 3:08 p.m.—and let's go to the second one of these—we received your supplemental records since your last appearance, we uncovered a new phone call that's at 3:08 p.m. to Ms. Williams' office. Now, that call lasted 10 minutes. Did you talk to Ms. Williams during this period of time?

Ms. THOMASES. I think it's possible that I did talk to her at that time.

Mr. CHERTOFF. This occurred after Ms. Williams—rather, after the Department of Justice officials had been ushered out of Mr. Foster's office, and shortly before Ms. Williams began the process of going through documents with Mr. Nussbaum. Did you discuss with Ms. Williams—not instruct—did you discuss with Ms. Williams in this call anything about Mr. Foster's documents?

Ms. THOMASES. During this period of time, I never discussed documents with Maggie Williams.

Mr. CHERTOFF. What was this all about?

Ms. THOMASES. Maggie Williams was incredibly upset that day. She cried through most of our phone conversations, both of them that I had with her that day.

Mr. CHERTOFF. Did she indicate to you she was about to go over and spend a considerable amount of time going through Mr. Foster's records?

Ms. THOMASES. She didn't tell me that.

Mr. CHERTOFF. Now, I see you have the affidavit, which I referred to earlier, in front of you. Page 5, I am going to read the question again:

Describe your involvement with Rose's representation of Madison before the Arkansas Securities Department, including but not limited to details of the work you performed in 1985 for Madison regarding obtaining approval from the ASD to issue preferred stock.

I want to read to you from the first paragraph here:

In the spring of 1985, Madison Guaranty Savings and Loan Association engaged the Rose Law Firm to represent it in an attempt to secure permission for the S&L to issue preferred stock and market it through a wholly-owned brokerage firm. While I was the billing partner on this matter, the great bulk of the work was done by Mr. Richard Massey, who was then an associate at Rose and whose specialty was securities law.

Did you know at that point in time, by the way, that Mr. Massey had just passed the bar in 1984?

Ms. THOMASES. Did I know that?

Mr. CHERTOFF. Yes.

Ms. THOMASES. No.

Mr. CHERTOFF. Do you know it now?

Ms. THOMASES. You just told me.

Mr. CHERTOFF. That's your only basis for knowing about that?

Ms. THOMASES. Yes.

Mr. CHERTOFF. It goes on to say:

I was not involved in the day-to-day work on the project. My knowledge of the events concerning this representation, as set forth in this answer, has been largely derived from a review of the relevant documents rather than my contemporaneous involvement in the representation, since Mr. Massey primarily handled the matter.

Now, I want to go back to your notes, and I want to ask you whether you would agree with me that that is difficult to square with what Mr. Hubbell told you, that “. . . HC had numerous conferences with Latham, Massey, and McDougal on both transactions. She reviewed some documents. She had one telephone call in 4/85, at the beginning of the deal, with Bev . . .”—meaning Beverly Bassett Schaffer. Can you square those two?

Ms. THOMASES. Can I read the rest of this?

Mr. CHERTOFF. Read the rest of what?

Ms. THOMASES. This answer.

Mr. CHERTOFF. The affidavit?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Well, certainly.

But I want to just ask you with respect to this statement:

I was not involved in the day-to-day work on the project. My knowledge is derived from a review of the documents, rather than my contemporaneous involvement in the representation, since Mr. Massey primarily handled the matter.

Can you square that with what Mr. Hubbell told you, based on the time records, that Hillary Clinton “. . . had numerous conferences with Latham, Massey, and McDougal on both transactions. She reviewed some documents. She had one telephone call in 4/85, at the beginning of the deal, with Bev.” Can you square those two?

Ms. THOMASES. This rendition of what her involvement was was the same she told me in 1992. At the time that Webb Hubbell gave me his rendition——

Mr. CHERTOFF. You say “this rendition.” You mean what is in the affidavit?

Ms. THOMASES. Yes, what is in the affidavit was what I was told in 1992 by Hillary Clinton about her involvement and Mr. Massey’s involvement in this project. And I never received or saw the time records that you are referring to; and therefore, I was not in a position to disagree with her statement.

Mr. CHERTOFF. But Webster Hubbell told you he had seen those records.

Ms. THOMASES. Yes.

Mr. CHERTOFF. Now, did Mrs. Clinton herself tell you that she had introduced Mr. McDougal to Rick Massey at a meeting with Mr. Latham?

Ms. THOMASES. No, she told me that it was the Latham-Massey relationship that cemented the client relationship with the firm.

Mr. CHERTOFF. Which had cemented it?

Ms. THOMASES. Well, you know, created the relationship.

Mr. CHERTOFF. Did she tell you that she had nothing to do with bringing the matter in?

Ms. THOMASES. I don’t know. As I said, I haven’t seen all of my notes. But I know there are other notes that I took in conversations with her at the same time that I took Mr. Hubbell’s notes. And those notes, as I recollect them, sound very much like this affidavit.

Mr. CHERTOFF. I think we may have another page of notes to show you, which we’re going to give to you right now, and we’ll hand out. I’m going to give you the Bates number for the record. I think it’s ST 0000029 or 30—I’m sorry, ST 0000039.

Now, this is a page of notes. It says at the top—there's some phone numbers which are whited out, and it says, "Gerth." I gather Gerth was the reporter, Jeff Gerth?

Ms. THOMASES. Yes.

Mr. CHERTOFF. It says here, "Q for HC." Questions for Hillary Clinton, is that correct?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Did Mr. Gerth give you questions, or did you, based on your conversations with Mr. Gerth, develop your own questions that you then put to Mrs. Clinton in this portion of your notes?

Ms. THOMASES. Jeff Gerth gave me the questions.

Mr. CHERTOFF. And then you read them to Mrs. Clinton?

Ms. THOMASES. Yes.

Mr. CHERTOFF. It says here, "Question number one. Did you ever talk directly with McDougal?" I gather it's McDougal, right?

Ms. THOMASES. Yes.

Mr. CHERTOFF. ". . . re Madison S&L, and Rose Firm, and state security commission?" Then it says underneath, "Preferred stock brokerage sub." Again, "preferred stock" refers to the issuing of the preferred stock, yes?

Ms. THOMASES. I don't know of the issuing. It refers to the subject of preferred stock.

Mr. CHERTOFF. And the "brokerage sub" referred to the desire of Madison to set up a subsidiary that could actually be the broker-dealer of the stock, right?

Ms. THOMASES. Yes.

Mr. CHERTOFF. Now, to the right, you have the two lines written, "And introduced J. McD to Rick Massey with John . . ." and you have "Leather." Is this what Mrs. Clinton told you the answer was?

Ms. THOMASES. I don't know.

Mr. CHERTOFF. When you say "John Leather," do you really mean to say ". . . to John Latham?"

Ms. THOMASES. Latham.

Mr. CHERTOFF. Where did you get the idea that Mrs. Clinton introduced Mr. McDougal to Rick Massey with John Latham?

Ms. THOMASES. This is what I wrote down. I don't know.

Mr. CHERTOFF. But it says at the top, "Questions for HC." These were questions Mr. Gerth had given you to ask Mrs. Clinton. Is it your testimony that this answer did not come from Mrs. Clinton?

Ms. THOMASES. It may have come from Mrs. Clinton.

Mr. CHERTOFF. You don't remember?

Ms. THOMASES. I don't remember, and I didn't specifically mark it with HC.

Mr. CHERTOFF. Was there anyone else you would have asked about that?

Ms. THOMASES. I don't think so.

Mr. CHERTOFF. My time has run well over, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

[No response.]

We have no further questions and we want to thank the witness for being with us today.

I want to thank my colleagues. Hopefully, we can produce some answer. We have called—I mention this to Senator Dodd—we

called the White House Counsel's Office, both Jane Sherburne and Mr. Quinn. We're in the process of sending a memo basically which asks them if they have anything new to indicate to us. Possibly we'll get a response from them.

Senator DODD. Mr. Chairman, I appreciate that.

Can you give us some sense—we've completed this phase. Obviously, the subpoena issue hangs out there. But beyond that, we've completed now this third phase?

The CHAIRMAN. I don't believe that's the case. But I'll ask counsel to sit down and to outline what aspects, and where we should be going. And I would hope they could do that, because the clock is running; and attempt to set up an agenda for us to move on.

Senator DODD. As I understand, there'll be no more hearings on subject matter aside from the subpoena issue between now and after we come back after the 1st.

The CHAIRMAN. I am going to keep that open for two reasons. Number one, if we're here, I would like to do as much as we possibly can to move this forward. Number two, as we develop additional information, it seems to me we should move it as quickly as possible. But I will say it would appear that as it relates to this aspect, we will call Mr. Hubbell back, for example. But I think we're fairly well concluded on this aspect. That doesn't mean that we may not bring a witness in who could contribute to our further understanding. I have to tell you I have some very real concern as to how we're going to attempt to finish this, all of our inquiry, given the time constraints that we're operating under, and given some of the requests to postpone our activities.

That's why I am reluctant to say that we will not go forward, because there is that element of the clock. So I do want to keep things going, but I am going to ask if counsel could see if they can't look at the areas that we know we'll have to go through, and see what kind of time schedule we will be undertaking them in.

Senator SARBANES. Mr. Chairman, I would like to point out that if Senator Dole stays with the schedule he's outlined for the first couple of months of the new year, that it would give this Committee the opportunity to move in a very concentrated way, uninterrupted by votes on the floor of the Senate, or uninterrupted I think by other significant business.

I understand counsel are in the process now of taking depositions relating to the so-called Arkansas phase, the third and last phase of our inquiry, if I'm correct.

The CHAIRMAN. I think that is the case.

Senator DODD. So, aside from the handling of the Foster papers, the handling of the RTC criminal referrals, those are one and two; I understand that the Chairman feels that basically, we're pretty much wrapped up.

The CHAIRMAN. I think it's fair to say.

Ms. Thomases, thank you for coming. You don't have to stay any longer.

Ms. THOMASES. Thank you very much. Have a nice holiday.

[Witness excused.]

The CHAIRMAN. I think it's safe to conclude that we have dealt with the bulk of those matters. And other than witnesses that may come in that we find are necessary to supplement, we're going to

then move ahead in the third phase. When we will begin that is something that again is up in the air.

I think, notwithstanding that we might be out, that the Committee might do best to come in some time earlier in January than our other colleagues might be required to. In other words, our other colleagues might not come in until late January. I think we might come in 10 days earlier.

Senator DODD. I also made reference to the Pillsbury Madison Report that they, I gather, spent 2 years and almost \$4 million on that report on the criminal referrals. I would hope we would make that a part of the Committee record. It seems to me it's a very important element.

The CHAIRMAN. It will be made part of the record.

Senator DODD. It already goes to the heart of number two of our work here, on the handling of the RTC criminal referrals. I think that's an important one. And then I would hope we might have some opportunity—and again on the Arkansas issues, it's not going to stun my Chairman here by raising the issue of how far back we go as a matter of legitimate inquiry of a Congressional Committee, a Federal Congressional Committee, examining the issues of what happens prior to the Administration coming to office.

I think there may be some ties there. But obviously, if we're going back, when we start setting precedents like that, I get worried about where we'll be going. I know that may be on his mind, too. But at some point, I would like to have a discussion about what would be the parameters of that, what the legislative purpose might be. Again, you always have to have a legislative purpose, so we can at least get some sort of a sense of what sort of road map we'll be following when we look at that issue. I just raise that with you here now. And hopefully, we can discuss that.

The CHAIRMAN. Let me, not for the purposes of extending our dialog on this, try to put a little more clarification.

I just want to note that there obviously is a question of the bills and the billing that we have not been able to resolve to our satisfaction. So we will be looking into that. We will be speaking to Mr. Hubbell with respect to that, I think we have indicated. But I think the bulk of our inquiry, it is safe to say, as it relates to this, has been taken, and we'll move forward on it.

Senator DODD. I didn't mean there wasn't a legitimate inquiry for the Independent Counsel. I guess my question is whether or not, from a Congressional standpoint, what is our legislative purpose in looking at that?

But again, I just raise that as an issue that ought to get handled. For precedent purposes, I can—if we get Bob Dole as President, I can see someone using the precedent and suggesting we go back and look at Kansas activities of 40 years ago.

Not that there are any Kansas activities.

[Laughter.]

That I know of.

[Pause.]

The CHAIRMAN. I have just been informed, and I share this with my colleagues, that the White House is in the process of putting forth a new proposal as it relates to the Kennedy notes. I'm not going to attempt to characterize that which Mr. Giuffra gave me.

I think essentially it goes over the point of attempting to work, I think they said cooperatively with them in attempting to get the Special Counsel to concede, I guess, the point that my friend and colleague has raised, and my friend Senator Sarbanes has raised, as it relates to the issue of privilege.

But they will be faxing us this. I wish again they had given this to us earlier, and I make this point. We are determined, the Chairman is determined, to press ahead with this matter. We are always open, though, to receiving whatever offer that might lead to us getting these notes without the necessity of going to the floor and/or into the courts. That's a continuing proffer that we have laid out there. So any time, if we can settle that matter, fine. But we will continue to move ahead, because I have to say that I think that's the only thing that's producing these offers.

We'll take it from there as soon as we receive that communique, jointly and together.

We stand in recess subject to the call of the Chair.

[Whereupon, at 3:20 p.m., the hearing was recessed, subject to the call of the Chair.]

[Appendix supplied for the record follows:]

APPENDIX

REC	EXT	DATE	TIME	TO	EXC	TEL	DUR	COST	ST-MEM	CODE
159	6734	727	1233	202	455	1414	2:25	7	2	22
200	6734	727	1233	202	456	1414	0:22	7	3	16
201	6734	727	1123	202	455	2466	1:12	7	3	25
202	6734	727	1238	202	456	2523	9:52	7	3	11
204	6734	727	1300	202	456	2533	1:53	7	3	8

215	6734	727	1127	212	[Business]		1:32	73	2	1
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232	6734	727	1233	212	[NY Ofc.]		1:59	73	6	1
234	6734	727	1308	212	[NY Ofc.]		0:40	56	6	1

REDACTED

The Review of Documents in Vincent Foster's Office

TIME	FROM	TO
July 21, 1993:		
Approx. 5:00 p.m.	Bernard Nussbaum agrees with Philip Heymann and David Margolis that senior Justice Department officials and Nussbaum will conduct a joint review of documents in Foster's office at 10:00 a.m. on July 22.	
11:00 - 11:01 p.m.	Susan Thomases Hotel	Rodham Residence
July 22, 1993:		
7:44 - 7:45 a.m.	Margaret Williams' Residence	Rodham Residence
7:57 - 8:00 a.m.	Rodham Residence	Susan Thomases Hotel
8:01 a.m. (pager)	Susan Thomases Hotel	Bernard Nussbaum
8:25 - 8:29 a.m.	Susan Thomases Hotel	Rodham Residence
9:00 a.m. (message)	Susan Thomases	Margaret Williams
Approx. 10:00 a.m.	Nussbaum reneges on the agreement allowing Justice Department officials to review documents in Foster's office.	
Morning	Nussbaum advises Stephen Neuwirth that the First Lady and Susan Thomases are concerned about law enforcement officials having "unfettered access" to documents in Foster's office.	

The Review of Documents in Vincent Foster's Office

TIME	FROM	TO
July 22, 1993:		
Late Morning	Senior White House officials meet to discuss the upcoming review of documents in Foster's office.	
10:48 - 11:54 a.m.	Susan Thomases calls the office of the Chief of Staff, Thomas McLarty, three times and the office of the Chief of Staff to the First Lady, Margaret Williams, three times.	
12:47 p.m. (pager)	Rodham Residence (Capricia)	Margaret Williams
12:55 - 12:56 p.m.	Margaret Williams Residence	Rodham Residence
12:55 - 12:56 p.m.	White House	Rodham Residence
Approx. 1:15 - 3:00 p.m.	Nussbaum describes documents in Foster's office, but does not allow law enforcement officials to review any documents.	
3:08 - 3:18 p.m.	Susan Thomases	Margaret Williams
Approx. 3:30 - 4:30 p.m.	Nussbaum and Williams conduct a second review of documents in Foster's office and segregate Clinton personal files.	
Approx. 4:30 - 5:00 p.m.	Williams calls Mrs. Clinton and transfers Clinton personal files to the Residence.	
5:13 - 5:22 p.m.	Susan Thomases	Margaret Williams
7:12 - 7:13 p.m.	Susan Thomases	Rodham Residence

Michael Chertoff
 Richard Ben-Veniste
 November 29, 1995
 Exhibit, Page 2

3. James Blair

No records.

4. James Lvons

No records.

5. Amv Stewart

No records.

6. Harrr Thomason

No records.

7. Susan Thomases

July 27, 1993

Up to 2nd floor at 3:08 p.m.⁴

Down at 4:31 p.m.⁵

Up to 2nd floor at 8:19 p.m.

8. Margaret Williams

July 22, 1993

Up at 7:25 p.m.

Down at 7:32 p.m.

July 25, 1993

Up to 2nd floor at 2:36 p.m.

Down at 2:50 p.m.

July 27, 1993

Up to 2nd floor at 10:31 a.m.

Down at 12:05 p.m.

Up to 2nd floor at 1:35 p.m.

Down at 2:25 p.m.

Up to 2nd floor at 3:20 p.m.

Down at 4:43 p.m.

9. Betsev Wright

No records.

⁴ Usher records show entry time as 3:10 p.m.

⁵ Usher records show exit time as 4:30 p.m.

1777

DEC-06-1995 20:13

WILLKIE FARR 45 FAX DEPT

212 821 9111 P.008/008

CELLULARPHONE

ACCOUNT NAME: STEAN THOMAS
Rate Plan: CONTRACT PREFERRED

Mobile Number: 977

DETAIL OF ROAMER CHARGES

ROAMER SURCHARGES:

7/14 DAILY SURCHARGE FROM WASHINGTON, DC WIRELINE	3.00
7/21 DAILY SURCHARGE FROM WASHINGTON, DC WIRELINE	3.00
7/22 DAILY SURCHARGE FROM WASHINGTON, DC WIRELINE	3.00
7/27 DAILY SURCHARGE FROM WASHINGTON, DC WIRELINE	3.00
7/28 DAILY SURCHARGE FROM WASHINGTON, DC WIRELINE	3.00
	<u>15.00</u>

ROAMER CALL CHARGES:

CALLS TO	NO. CALLED	DATE	TIME	PERIOD	MINUTES	CHARGES			TOTAL
						ATL	LONG	TAX	
Calls from WASHINGTON, DC WIRELINE									
OPERATOR	0	7/14							
OPERATOR	0	7/14							
NEW YORK NY		7/14							
OPERATOR	0 202- [Williams Fm]	7/22	503P	2	2.0	2.000		.22	2.22
OPERATOR	0 212- [Office]	7/22	503P	1	1.0	1.000			2.22
OPERATOR	0 202- [PHOTOS	7/22	503P	1	10.0	10.000		1.00	3.22
NEW YORK NY		7/27							
NEW YORK NY		7/28							
Subtotal =						21.0	21.00	1.42	23.42
Total =						21.0	21.00	1.42	23.42

6266 per Benito Roman to USD 12/7/95 3:00

CALL CHARACTERISTICS: 0=OPERATOR ASSISTED

DETAIL OF CALL CHARGES

REF	CALLS TO	NO. CALLED	DATE	TIME	PERIOD	MINUTES	LOCAL LAND/		TOTAL
LINE							ATL	LONG DISTANCE	
1	NEW YORK NY	212- [Office]	7/25	140P	1	2	1.100	.100	1.200
2	SUMMIT NJ	908- [Bus.]	7/25	140P	1	2	1.100	.100	1.200
3	QUEENS NY	718- [Car Svc]	7/25	132P	1	3	1.550	.100	1.650
4	NEW YORK NY	212- [Office]	7/25	520P	1	2	1.100	.100	1.200
5	WASHINGTON DC	202- [P. Solis]	7/25	524P	1	3	1.550	.550	2.100
6	NEW YORK NY	212- [Home]	7/25	522P	1	3	2.750	.300	3.050
7	WASHINGTON DC	202- [W H Sch]	7/25	522P	1	3	1.550	.550	2.100
8	NEW YORK NY	917- [Bus.]	7/25	522P	1	1	.550	.050	.600
9	FREEDHOLD NJ	908- [Bus.]	7/25	537P	1	2	1.100	.100	1.200
10	NEW YORK NY	212- [Home]	7/25	535P	1	1	.550	.050	.600
11	NEW YORK NY	212- [Home]	7/25	541P	1	1	.550	.050	.600
12	BRIDGEWATER NY	915- [Bus.]	7/25	541P	1	1	.550	.050	.600
13	BRIDGEWATER NY	915- [Bus.]	7/25	543P	1	7	3.550	.420	3.970
14	SPRING VALLEY NY	212- [Bus.]	7/25	531P	1	1	.550	.050	.600
			7/22						
			7/23						
			7/25						

REDACTED

*Indicates Long Distance Charges

DEC-07-1995 13:46

AGC TREASURY DEPT

202 622 1944

All Entry Exits for 07/20/93 - 07/28/93; L_NAME - THOMASES; F_NAME - SUSAN; BETWEEN
12:00:00AM AND 11:59:59PM - Page 1

DATE TIME..... L NAME..... F NAME... M BADGE TYP POS L STATUS.....

27 08:20:53PM THOMASES	SUSAN	P 34AC64 P	A1	3	EXITING
27 02:50:59PM THOMASES	SUSAN	P 34AC64 P	A5	1	ENTERING
21 09:11:44PM THOMASES	SUSAN	P 34AC64 P	B4	3	EXITING
21 02:51:11PM THOMASES	SUSAN	P 34AC64 P	B4	1	ENTERING

has been connected by Goch
 a confidential source paid to Rose from
 2/28 To w/ Webb McNeill

- ① Preferred stock offering 4/85
 ② Broker dealer Summer 1985

Mosley had relationship w/ Lockman + HC
 had relationship w/ Fred D. Little with whom he
 had a w/ Lockman + had also to do w/ getting
 the clinic in. She did all the billing.

Autism HC had numerous conf w/ Lockman, Mosley +
 McDougall on both transactions. She reviewed
 some doc. She had one to in 4/85
 at beginning of the deal w/ Rev.

Neither deal went through.

Broker dealer was opposed by stock but
 approved by Rev under certain conditions
 which they never met.

Preferred stock?!

But for Mosley it would not have been there.

File from financial from selling
 Mosley's Report. Rose relied on
 company audit report.

Rev paid Rose for fees \$240,000 in 1991

Rev HC was billing patients +
 attended conferences. He knew a
 major roll — has vs HC — has

1985 made 1/2 lot to Ozark Air Services
 with no revenue stamp. Mosley's

recollection still had sign # of Lons
 Wade was given authority to sell them
 a \$2000. Wade assumed liability on
 the loan balance. Partial release
 - on mortgage when lots are sold

212

2021

Geeth

S. J. J. J.

- ① Did you ever talk directly with McD
re-Prodson S&L and Tose team and State
Security Comm. 1.2.

published stock
brokerage sub.

introduced J. McD
to R. C. Morsey w/
John Leather

- ② Polling Manor is it related to WW -
H.C. does not remember

- ③ Robert Timmerman
that property.

- ④ Differential bet state & fed laws
2 discrepancies

State Fed
over
\$1060

Public Private Partners
the fees

1990-91
\$700-\$800

Children's TV workshop

1990 \$7200 1991 \$600

not for profit corp!!

REDACTED

- ⑤ Where did she get corp records.
Did she get it from Simon McD
who's brother bought it to you.
H.C. Simon McD contact.

Charles James off records (George) (James)

Bill Kennedy & Carolyn Huber
Cooperation issue

- ⑥ Can we give Geeth WW 87 88 + 89
Tax returns.

- O - Juan Hernandez Richard Mayra

Billie Teague Luis Garcia

Date July 27 _____
 Name _____ Telephone _____ Number of calls _____ Registered call _____

From Spice _____

#22 sent to see you today _____

REDACTED

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Benito Romano

New York
Washington, DC
London
Paris

December 11, 1995

BY FACSIMILE AND U.S. MAIL

The Honorable Alfonse M. D'Amato
 The Honorable Paul S. Sarbanes
 Special Committee to Investigate Whitewater
 Development Corporation and Related Matters
 534 Dirksen Senate Office Building
 Washington, D.C. 20510

Dear Chairman D'Amato and Senator Sarbanes:

On behalf of Susan P. Thomases, I am writing to express our deep concerns about statements which have been made about Ms. Thomases' efforts to cooperate with the Special Committee's investigation. Ms. Thomases has not and will never intentionally withhold any relevant materials appropriate to the Special Committee's investigation. In our responses to prior Special Committee document requests we have conducted diligent searches of Ms. Thomases' records after discussions with staff that have narrowed the requests, and in light of what we then understood to be the relevant areas of inquiry and, beyond that, have sought from third parties records that we believed were responsive. Our letter of December 6 laid out for the Special Committee truthfully and frankly how the records supplied with that letter came to light. We are grateful that Senator Sarbanes read our December 6 letter into the record. We believe that any reasonable interpretation of the circumstances would demonstrate that our letter describes a good-faith review of records that was subject to the normal, human limitations of time and memory. The fact is, as soon as the additional phone records came to light, they were provided to the Special Committee. To criticize Ms. Thomases for such voluntary disclosure and to draw conclusions about Ms. Thomases' 1993 contacts with people in the White House when there is simply no factual basis for such conclusions is wholly unwarranted.

We are continuing to try to cooperate with the Special Committee. Although the Special Committee has never asked

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The Honorable Alfonse M. D'Amato
The Honorable Paul S. Sarbanes
December 11, 1995
Page 2

Ms. Thomases to provide any records relating to July 27, 1993, to assist the Special Committee in this phase of its inquiry, we have searched for documents that could conceivably be relevant to the visit that White House records indicate Ms. Thomases made to the White House on that date. In particular, we have reviewed her files, including files previously produced in redacted form or judged non-responsive to prior Special Committee requests, for records that may now appear relevant, given the additional matters on which Ms. Thomases has been questioned.

The documents attached hereto, Bates numbered ST0000121 to ST0000129, fall into this category. We note that to the extent these records shed any light on the specific matters under investigation, they appear to support Ms. Thomases' previous testimony that the White House visitors records may not be accurate. For example, Ms. Thomases' telephone records show a credit card call from Washington National Airport on July 27, 1993 at 8:44 p.m., while the White House visitor's records purport to reflect Ms. Thomases departing the White House complex at 9:11 p.m. Our review of records is ongoing, and should additional such materials be located they will be supplied to the Special Committee immediately.

I hope this letter both demonstrates Ms. Thomases' serious concerns about comments being made about her actions, and at the same time her intention to cooperate in good faith with the Special Committee's inquiries. As I have emphasized to the Special Committee repeatedly, Ms. Thomases is prepared to appear voluntarily before the Special Committee on Monday, December 18, 1995 and we understand that her appearance has been publicly announced for 1:00 p.m. on that date.

Very truly yours,


Benito Romano

Enclosures

/ 0053314

DATE 12/18/95PAGE A16

THE WALL STREET JOURNAL

Whitewater Report for RTC Discloses 'No Basis' for Agency to Sue Clintons

By GLENN R. SIMPSON

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON — The Clintons shouldn't be sued by the Resolution Trust Corp. over the Whitewater development and the related failure of Madison Guaranty Savings & Loan, a new report prepared for the RTC recommends.

President Clinton and Hillary Rodham Clinton had little knowledge and no control over the Whitewater project in which they invested, and they weren't aware that any funds that went to Whitewater may have been taken from Madison. In addition, there is no firm evidence that the Whitewater project harmed Madison. "Accordingly, there is no basis to sue them," says the report prepared by Pillsbury Madison & Sutro, a San Francisco-based law firm. The report also recommends that the RTC stop its Whitewater investigation.

Following weeks of adverse publicity on the Whitewater affair, the White House was buoyed yesterday with the findings and an apparent deal with the Senate Whitewater Committee over a disputed document. After dropping most of its conditions for turning over the document—notes by former administration attorney William Kennedy about a Nov. 5, 1993, meeting of presidential lawyers — the White House appeared close to an agreement with the panel over the weekend.

The last major sticking point appeared to be removed yesterday when an official involved in the dispute said in an interview that Independent Counsel Kenneth Starr, who has also filed a subpoena for the document, has indicated he is likely to agree to the White House's revised terms.

Senate Debate Scheduled

The White House has agreed to give up the document if both the Whitewater committee and the independent counsel state that turning over the notes doesn't waive the president's right to claim attorney-client privilege on other matters, as is now expected. A formal agreement in the next two days would avert a Senate debate and vote on the matter, currently scheduled for Wednesday, as well as a subsequent court fight.

All of the concessions that led to the dispute's resolution were made by the White House, prompting some people involved in the fight to ask why the administration hadn't taken those steps two weeks ago.

Pillsbury Madison's final report goes considerably further than a previous draft, released last spring, in concluding that the Clintons aren't liable for Madison's losses. The new version is drawn in part from statements by the president and the first lady as well as by others involved in the matter. It portrays the Clintons as largely ignorant of the matter for the first seven years of their investment with Madison owner James McDougal and his former wife Susan. There is "no basis to assert that the Clintons knew anything of substance" about how the McDougals ran the project, including possible financial improprieties, the report states.

Some Records Missing

The law firm's conclusion that the Whitewater project didn't harm Madison is particularly significant because Mr. Clinton's critics have frequently asserted that the project was costly to taxpayers.

However, at least \$41,000 that went into Whitewater can't be traced to Madison because of missing records.

Pillsbury Madison also found no evidence "except an unsubstantiated press report" that Mr. Clinton, while governor of Arkansas, pressured then-judge David Hale to make a \$300,000 loan to Susan McDougal. Mr. Hale's assertion that he was pressured by Mr. Clinton is the only direct allegation of wrongdoing against the president, and is a major focus of Mr. Starr's inquiry. The report does conclude that Susan McDougal's receipt of this money "may be wrongful and may be traceable back to Madison Guaranty."

A similar verdict was delivered regarding a 1985 fund-raiser for Mr. Clinton's gubernatorial campaign at which some of the money may have come from an Arkansas bank, also a focus of the Starr inquiry.

Clinton Denial Is Cited

Mr. Clinton denied knowing that funds may have come from illegal sources, and "no contrary evidence has been found," the report states. Pillsbury Madison spent two years and almost \$4 million to reach its conclusions.

The law firm found that the absence of many records and the unwillingness of key witnesses to cooperate in the investigation prevented it from laying some questions to rest. The strength of its conclusions, despite these problems, relies on a larger view of the McDougals' activities.

The Whitewater project "was not unique, but instead was one example of a broader pattern of funds transfers by the McDougals between and among entities they owned or controlled, apparently motivated by the McDougals' need for funds with which to pay their debts."

DATE 12/18/95PAGE A1

The Washington Times

Whitewater panel to grill Thomases

Will focus on events after Foster's death

By Jerry Seper
THE WASHINGTON TIMES

New York lawyer Susan Thomases makes her third appearance today before the special Senate Whitewater Committee in what promises to be a bitter cross-examination of her activities in the days that followed White House Deputy Counsel Vincent W. Foster Jr.'s death.

Republicans believe Mrs. Thomases, one of first lady Hillary Rodham Clinton's closest advisers, was at the center of a White House effort to block federal authorities from gaining access to documents — including Whitewater records — in Mr. Foster's office.

In two previous appearances, Mrs. Thomases has not been able to recall numerous telephone calls she made to the White House, Mrs. Clinton and others beginning within hours of Mr. Foster's July 20, 1993, death, or to remember with whom she spoke.

Sen. Alfonse M. D'Amato, New York Republican and committee chairman, called her testimony "not credible, not responsive, very distressing and disingenuous" and asked the panel last week to subpoena Mrs. Thomases to answer additional questions. The panel did so on a party-line 10-8 vote.

Mr. D'Amato also accused Mrs. Thomases of "outrageous conduct" in withholding records on two calls she made to Mrs. Clinton and one to the first lady's chief of staff, Margaret A. Williams, on the night of Mr. Foster's death.

The three calls were included in records submitted to the committee Dec. 7 by Mrs. Thomases' attorney, Benito Romano. The committee had asked for the records in July.

Meanwhile, no compromise was reached yesterday with the White House over the release of notes taken during a November 1993 strategy meeting involving the government's Whitewater investigation. The administration has withheld the notes, claiming attorney-client privilege. Mr. D'Amato said there would be "no more delays" in committee efforts to get the notes.

The White House offered on Friday to turn over the records in exchange for panel assurances that their release did not constitute a waiver of attorney-client privilege on other meetings and committee efforts to get Whitewater independent counsel Kenneth W. Starr to adopt the same position.

The full Senate is scheduled to vote Wednesday on a committee

request to sue the administration in federal court to get the records.

Senate Majority Leader Bob Dole, during an appearance on NBC-TV's "Meet the Press," said Whitewater had surfaced again as an issue because of "the question of turning over certain notes — the same thing that Nixon had questions about years ago in Water-gate."

"There's almost the feeling out there they may be hiding something. What are they hiding?" Mr. Dole said. "I don't know, but I wish they'd give the information to the committee and then they'll make a decision."

White House Chief of Staff Leon Panetta, on CBS-TV's "Face the Nation," said he was hopeful a compromise on the notes could be worked out with the committee and commended Mr. D'Amato for being willing to "meet partway" in the discussion.

"We hope that that's a step in the right direction so that we could avoid this kind of confrontation," Mr. Panetta said.

With regard to Mrs. Thomases, committee Republicans have accused her of lying on whether she conspired to hide Whitewater records, questioning her about at least 20 calls she made in a 43-hour period to Mrs. Clinton, the White House and others after Mr. Foster's death.

The senators said testimony has shown Mrs. Clinton was concerned about "unfettered access" by law enforcement officials to the Foster records, and they believe Mrs. Thomases relayed that concern to White House Counsel Bernard Nussbaum. It was Mr. Nussbaum who conducted a search of Mr. Foster's office after reneging on an agreement to allow Justice Department investigators a look at the records.

In August, White House Associate Counsel Stephen Neuwirth tes-

tified that Mr. Nussbaum told him the first lady and Mrs. Thomases were concerned about "unfettered access" to papers maintained by the deputy counsel. He said the first lady's concerns were relayed to him by Mr. Nussbaum after a telephone conversation Mr. Nussbaum had with Mrs. Thomases, although he had no idea what "the basis was for that concern."

Mr. Nussbaum testified he did not recall the conversation.

Republicans also noted that Thomas E. Castleton, a former White House aide, testified he carried a box of records from Mr. Foster's office to the president's residence after the deputy counsel's death because its contents "needed to be reviewed by the first lady."

Mr. Castleton testified Mrs. Williams told him the box contained "personal and financial records pertaining to the first family."

Uniformed Secret Service Officer Henry P. O'Neill told the committee he saw Mrs. Williams take papers out of the White House counsel's suite just hours after Mr. Foster's death.

Justice Department officials testified that, as of 5 p.m. on July 21, 1993, they had an agreement with Mr. Nussbaum to review documents in the office to see if they were of any interest to authorities. By 10 a.m. the next day, Mr. Nussbaum had changed his mind, ordering Justice officials, the FBI and U.S. Park Police to sit in chairs in the office while he reviewed the records.

Records show Mrs. Clinton called Mrs. Thomases on July 22, 1993, at 7:57 a.m. in a call that lasted three minutes. One minute after that call ended, Mrs. Thomases called Mr. Nussbaum. Two hours later, the White House-Justice agreement on the search of Mr. Foster's office was canceled.

**MADISON GUARANTY SAVINGS & LOAN
AND
WHITEWATER DEVELOPMENT COMPANY, INC.**

**A PRELIMINARY REPORT
TO THE RESOLUTION TRUST CORPORATION**

Prepared by

**Pillsbury Madison & Sutro
San Francisco, California**

**With financial and economic
analysis support from**

**Tucker Alan Inc.
Seattle, Washington**

April 24, 1995

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I. INTRODUCTION AND OVERVIEW.

This preliminary report covers the phase of the RTC's investigation of Madison Guaranty Savings & Loan Association that examined the relationship between Madison Guaranty and Whitewater Development Company, Inc. Specifically, this phase focused on whether there were any substantial monetary links between Madison Guaranty and Whitewater that resulted in losses to Madison Guaranty. As such, it required that the RTC: (1) trace the source of funds received by Whitewater to determine whether those funds came, either directly or indirectly, from Madison Guaranty; and (2) decide whether anyone responsible for such funds transfers should be sued by the RTC in a civil action, given that applicable statutes limit the RTC to claims arising from fraud, intentional misconduct resulting in unjust enrichment or intentional misconduct resulting in substantial loss to the institution. See Part II below.

To date, the investigation has consisted principally of an intensive review of the available documentation on Madison Guaranty, on Whitewater and on various other entities owned or controlled by the principal shareholders of Madison Guaranty, Jim and Susan McDougal ("McDougal-controlled entities"). (Most witness interviews have been deferred until the documents could be assembled and analyzed.) Documents were obtained from dozens of sources, falling into three basic categories: Madison Guaranty records obtained either from its receiver or from the Independent Counsel; bank records obtained from various financial institutions pursuant to subpoena; and Whitewater records obtained principally from President and Mrs. Clinton through their counsel.¹

Once the documents were obtained, they were used to reconstruct bank accounts and to trace deposits back to their source. A review of the documents led to the identification of approximately 40 people and entities who might have handled funds transferred between Madison Guaranty and Whitewater. For each, records were assembled to reconstruct the history of their bank accounts at Madison Guaranty. The objectives were to determine whether deposits into Whitewater originated from Madison Guaranty, whether proper consideration was exchanged for any transfer of funds identified, whether Madison Guaranty suffered losses as a result of these exchanges and whether the McDougals, the Clintons or both were aware of the source or use of the funds transferred.

A two-part approach was used to perform this work:

First, deposits into Whitewater were identified by reconstructing and analyzing all of Whitewater's available financial records. As a result, the immediate depositors were identified. In turn, their Madison Guaranty bank

¹ Further information on the source of documents, and on the letter prefixes used to identify the source of documents, is contained in Part X of this report. Approximately 200,000 documents and 700,000 microfilm images were reviewed in this phase of the investigation.

statements and transaction details were obtained, where available. These documents (including microfilm images) were then organized chronologically by bank account and entered into a database.

Second, an attempt was made to identify transactions between Madison Guaranty and the McDougals or McDougal-controlled entities, and among them, that were similar in amount and timing to deposits from the McDougals or McDougal-controlled entities into Whitewater.² Where such transactions were identified, the underlying documents were inspected to determine who the parties to the transaction were, and then their bank accounts were analyzed to determine the source of the funds ultimately transferred to Whitewater. In this fashion, deposits into Whitewater were traced back to the source of the funds, or until the evidence indicated that no specific source could be identified using documents alone. Ultimately, this work was attempted for every deposit from the McDougals or McDougal-controlled entities into Whitewater that occurred while the McDougals owned Madison Guaranty. As described below, at this stage of the investigation, certain preliminary observations can be made about the source of some of these deposits. To know more about the purpose and intent of these transactions, or the knowledge of specific individuals, would require further information from potential witnesses. See Part X.B below.

In reading this report and reviewing this work, several qualifications should be borne in mind:

First, and perhaps most important, money is fungible. To the extent that funds were commingled in bank accounts with other funds from other transactions, it may be difficult or impossible to determine the source of a deposit into Whitewater. For example, Madison Guaranty funds might be deposited into the bank account of a McDougal-controlled entity. The same day or later, that entity might write a check to Whitewater. If the only funds in the account were the funds from Madison Guaranty, one knows their source. If, however, as was often the case, other funds already were in the account, it may be difficult or impossible to say whether Madison Guaranty funds actually reached Whitewater.

With one minor exception (*see* observation 3.d on page 4), a review of the records has established no instances in which Madison Guaranty or Madison Financial funds were directly deposited into Whitewater. There also were no instances where discrete transactions occurred on the same day in the same amount without funds being commingled to some extent with funds from other transactions. There were, however, several instances of what could be

2 The concept of "similar" was broadly construed. It was recognized that transfers of money from Madison Guaranty to Whitewater could have been routed through various entities via multiple transactions days or weeks before or after a deposit into a Whitewater account.

indirect funds transfers, but little is known about the purpose or reason for these transfers.

Second, in some instances the records are incomplete. Whitewater had a general ledger but no cash flow statements. Therefore, cash flow data had to be reconstructed from source documents such as bank statements and canceled checks from Madison Guaranty and from other financial institutions. There are significant gaps in the available Madison Guaranty documentation. Microfilm of bank records (canceled checks and deposits) does not exist for all periods, and some of what does exist is essentially impossible to read. Hard copies of many bank records also are not available. Also, some transactions that appear to provide funding for a deposit into Whitewater originated from people or entities not having accounts at Madison Guaranty. This made it more difficult to determine the ultimate source of these funds.

Third, often it is necessary to ascertain the business purpose of a transaction. In many instances, the purpose of a transaction could not be determined from the available documentation. (As noted above, resolving issues of purpose, intent and knowledge would require further information from potential witnesses.) One difficulty in making this assessment is the lack of information about the operations of many of the McDougal-controlled entities.

In addition to these evidentiary issues, there are legal issues. Even if funds were traced back to Madison Guaranty, for the RTC to have a civil claim, there must be provable culpability of the type noted above (fraud or intentional misconduct) and there must be proof that Madison Guaranty (and ultimately the RTC, or the deposit insurance fund) suffered a loss from culpable transactions. In addition, to warrant the institution of legal proceedings by the RTC, culpability, damages and the potential defendants' assets must all be substantial enough to make the litigation cost-effective.

Subject to these qualifications, the investigation to date has led to the following preliminary factual observations:

1. Slow lot sales at lower than expected prices and substantial increases in commercial interest rates caused the Whitewater project to suffer a cumulative cash shortfall of \$193,189 as of the end of fiscal year 1986. Whitewater Development Company itself could not fund the shortfall.

2. The shareholders made up the shortfall by advancing³ \$194,493 through the end of fiscal year 1986. Of this total, the McDougals and McDougal-controlled entities advanced \$158,523 and the Clintons advanced

3 In this report, neutral terms such as "advances" and "disbursements" are used in place of "investment" or "loan" because the documentary evidence often does not reveal which of the shareholders' disbursements were investments and which were loans.

\$35,970.⁴ The advances from the McDougals and McDougal-controlled entities had the effect of relieving the Clintons and the McDougals from much but not all of the debt in which the creditors had recourse to their personal assets.

3. Over the years in which Jim McDougal controlled Madison Guaranty (1982-1986), the McDougals and McDougal-controlled entities advanced \$134,294 to Whitewater.⁵ Typically, these advances occurred just before or just after Whitewater made a payment to a bank or other creditor not controlled by the McDougals. With one exception, no deposit was made directly into Whitewater from Madison Guaranty or Madison Financial. Of this \$134,294:

a. The traceability of \$20,752 cannot be established because certain Madison Guaranty documents (bank statements and microfilm) are missing.

b. The traceability of \$25,520 cannot be established, in large part because the accounts through which this money flowed had sufficient balances so that the source of the funds that eventually reached Whitewater cannot be determined from documentary evidence alone.

c. The traceability of \$58,022 back to Madison Guaranty can be established (subject to the qualifications noted above).

d. The one direct deposit, a \$30,000 bonus that Madison Financial awarded to Jim McDougal and deposited into the Whitewater account, occurred on May 1, 1985. It cured an overdraft created the week before by a \$30,000 payment to Senator Fulbright in connection with a real estate transaction unrelated to the Whitewater property. The available evidence suggests that the bonus and the payment to Senator Fulbright have no substantial relationship to Whitewater. Nothing seen to date suggests that Senator Fulbright or the Clintons had any knowledge that the funds transferred by McDougal to Fulbright had any relationship to Whitewater, Madison Financial or Madison Guaranty.

4. In a number of instances, bank debt related to Whitewater was paid back in part out of bank accounts other than Whitewater's. In many of these instances, the payor is known. In 11 instances, however, the available evidence does not disclose who made the payment on bank debt related to Whitewater; all that can be said is that the available evidence does not tie these

4 These figures are net of repayments by Whitewater to the shareholders. The Clintons received no such repayments. The McDougals and McDougal-controlled entities advanced \$228,937 gross and received repayments of \$70,414; thus, their net advances were \$158,523. Of the \$228,937 gross, the McDougals advanced \$32,284, Jim McDougal as trustee advanced another \$480 and McDougal-controlled entities advanced the remaining \$196,173.

5 This number is gross, not net of repayments; \$21,284 came from the McDougals, \$480 from Jim McDougal as trustee and the remaining \$112,530 from McDougal-controlled entities.

payments to any of the Madison Guaranty accounts reviewed using the two-part approach explained above. Seven of these payments were for sums under \$1,000; the other four ranged from \$1,015 to \$27,600. Together, the 11 payments total \$39,474.

5. It cannot be determined at this time how much, if anything, the Clintons knew about the McDougals' advances to Whitewater, the source of the funds used to make those advances or the source of the funds used to make the 11 payments on bank debt referred to above. The available evidence shows only that the Clintons knew of the existence of at least some of the bank debt incurred by Whitewater and its shareholders, signed some promissory notes and loan extensions, and on occasion (e.g., before September 1980, in 1986, in 1988 and in the early 1990s) made payments on bank debt or taxes out of their personal checking account. The evidence also suggests that the Clintons had little direct involvement in Whitewater's financial management until 1988, by which time all of the lots had been sold and McDougal had suffered a nervous breakdown. After 1988, Mrs. Clinton played a more active role.

6. David Hale's \$300,000 loan to Susan McDougal (doing business as Master Marketing) in April 1986 was deposited into the McDougals' joint checking account; \$25,000 of it went toward Whitewater's purchase of land from International Paper and \$111,524 was used to pay off Flowerwood Farms' loan from Stephens Security Bank, a portion of which had been advanced to Whitewater in 1985. The International Paper deal did not benefit Whitewater or the Clintons; to the contrary, it left Whitewater with a mortgage of \$440,760 but no corresponding asset, and it led to litigation and entry of a \$478,126.65 judgment against Whitewater.

7. The movement of funds among McDougal-controlled entities and from them to Whitewater is but one example of a broader pattern of funds transfers by the McDougals between and among entities they owned or controlled. Especially after 1983, the McDougals lacked the money needed to pay their debts, so they moved money between entities as needed to pay obligations to third persons. To some extent, this phenomenon is described below. Further information regarding it is provided in the interim reports on other phases of the investigation.

The applicable law is explained in Part II. The remainder of this report describes in more detail the history of the Whitewater project and the points made above. This history covers 14 years, because the story of Whitewater starts before McDougal's acquisition of Madison Guaranty and ends after its failure. See Chart 1 for a time line of events.⁶

⁶ Charts referred to in this report are contained in a separate appendix. The charts must be read together with the accompanying text.

As the time line suggests, it is helpful to think of Whitewater's history in three periods. The first period covers the years 1978-1981, in which the venture was formed and began to sell lots. The second period covers the years 1982-1985, in which sales lagged, causing large operating deficits and leading to the bulk sale of all of Whitewater's unsold lots. The third and final period covers the years 1986-1992, in which the venture's bank debt was repaid in full. By and large, the report's presentation follows this chronology. The report departs from the chronology, however, for an in-depth look at the period of most interest from a funds-tracing point of view, 1984-1985.

Part III of the report starts by describing Jim McDougal's background in real estate. It also introduces many of the people and entities who figure in later events.

Part IV covers the initial phase of the Whitewater project. The purchase of the land is outlined, with the goal of understanding what, from a financial point of view, the venturers might have had in mind. The venturers' financial contributions and the obligations they incurred also are outlined. Sales and the project's fortunes are traced from 1978 through 1981, when lot sales occurred at a moderate pace despite increasing interest rates and other vicissitudes.

Part V covers the years between 1982 and 1985, in which sales slackened and, for long periods of time, almost ceased. In this period, debt repayments became more and more difficult to fund out of project revenues.

Part VI focuses on debt in the key years 1984-1985. In these years, sales essentially ceased and revenues no longer came close to covering debt. A complex series of funds transfers ensued, as funds were transferred from one McDougal-controlled entity to another. Such transfers had occurred on occasion in previous years, but in these years the pace increased considerably, as did the amount of funds being transferred.

Part VII attempts to trace back to Madison Guaranty the money deposited by McDougal and McDougal-controlled entities into Whitewater during the period McDougal controlled Madison Guaranty. As noted, the documentary evidence shows that \$134,294 was deposited into Whitewater from the McDougals or McDougal-controlled entities. Of this total, traceability can be established as to a little more than half of this--\$30,000 directly and at most another \$58,022 indirectly. As noted above, the \$30,000 did not benefit Whitewater.

Part VIII examines other issues having some relationship to Whitewater: the McDougal bonus; campaign contributions; and the David Hale loan.

Part IX returns to the real estate project itself to tie up the loose ends. It examines the final sale of real estate and the debt that remained behind after

the real estate was gone. It also examines the role of the Clintons in these later years and it covers the final sale of their interest to Jim McDougal.

Finally, Part X is an appendix listing sources of evidence and possible sources of further information. It also notes certain limitations in the scope of this investigation.

II. THE LAW APPLICABLE TO POTENTIAL CLAIMS.

A. The statute of limitations limits possible claims to those involving fraud or intentional misconduct.

The federal statute of limitations applicable to RTC claims is 12 U.S.C. § 1441a(b)(14), as last modified on February 12, 1994 by Public Law 103-211, Title IV, § 406, 108 Stat. 41.⁷ This statute limits tort claims to claims

arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the institution.⁸

Accordingly, even if evidence of less culpable conduct such as simple or gross negligence were to be found, the RTC could not assert such claims.

B. Elements of possible claims involving fraud or intentional misconduct.

The possible claims that have been identified include common law fraud, conversion, breach of fiduciary duty and check-kiting. The elements of these claims are as follows:

1. Common law fraud.

Under Arkansas law, the elements of common law fraud are:

- A false representation of a material fact;
- Knowledge or belief on the part of the person making the representation that the representation is false;
- An intent to induce reliance upon the false representation;

7 The alternate three-year statute, 12 U.S.C. § 1821(d)(14), expired February 28, 1992, Madison Guaranty having been placed into a conservatorship on February 28, 1989.

8 12 U.S.C. § 1441a(b)(14)(A)(ii).

- Justifiable reliance; and
- Resulting damages.⁹

2. Conversion.

Under Arkansas law, the elements of conversion are:

- The exercise of dominion over the property of another;
- With the intent to exercise that dominion or control that dominion;
- In violation of the rights of the owner or person entitled to possession of the property; and
- Resulting damage.¹⁰

3. Breach of fiduciary duty.

Under Arkansas law, any failure of a director or officer to exercise good faith which results in a loss to the corporation constitutes a breach of fiduciary duty.¹¹

While not always thought of as an intentional tort, a breach of fiduciary duty could be intentional. For example, evidence of an intent to defraud someone to whom a fiduciary duty is owed, or to convert that person's property, might establish an intentional breach of the duty of loyalty.

4. Check kiting.

There is no standard definition of check kiting.¹² Many courts, however, rely on this definition:

[Check kiting occurs] when accounts are maintained in different banks and checks are drawn on one account and deposited in the other when neither account has any substantial funds in it to pay the checks drawn on it. Since it takes several days to collect a

9 *Morris v. Valley Forge Insurance Co.*, 305 Ark. 25, 805 S.W.2d 948, 951 (1991).

10 *City National Bank of Fort Smith v. Goodwin*, 301 Ark. 182, 783 S.W. 2d 335, 337 (1990).

11 *Smith v. Citation Mfg. Co.*, 266 Ark. 591, 587 S.W. 2d 39, 41 (1979); *Goodwin v. Churchman*, 305 Ark. 520, 810 S.W. 2d 34, 38-39 (1991).

12 *United States v. Montgomery*, 980 F.2d 388, 393 (6th Cir. 1992).

check, each of the accounts will show substantial credits of uncollected checks, and those credits will continue so long as checks continue to be drawn every day in each bank and deposited in the other bank. If some checks are drawn to cash or to legitimate third parties, the checks that flow between the two banks have to be increased to maintain the "kiting" equilibrium.¹³

In other words, check-kiting involves a scheme to create the illusion that there are sufficient funds to back the requested draws:

Check kiting, at root, is a plan designed to separate the bank from its money by tricking it into inflating bank balances and honoring checks drawn against accounts with insufficient funds.¹⁴

Two conditions must exist for a successful check-kiting scheme. First, there must be a period of several days in the collection process before the depository bank presents the check to the drawee bank. Second, the banks must be willing to pay checks drawn against uncollected funds.¹⁵

Check kiting is a criminal offense. Check kiting also may be civilly actionable under the Uniform Commercial Code or theories of restitution.¹⁶ Typically any litigation takes place between banks, as the perpetrator, almost by definition, does not have the money needed to pay the debt; hence the kite.

In addition to the four possible claims described above, two other doctrines might be used to try to establish liability: conspiracy and aiding and abetting.

5. Civil conspiracy.

In Arkansas, the elements of civil conspiracy are:

- A combination of two or more persons;

13 *United States v. Giordano*, 489 F.2d 327, 329 (2d Cir. 1973). See also *Fidelity & Cas. Co. of New York v. Bank of Altonburg*, 216 F.2d 294, 302-03 (8th Cir. 1954), *cert. denied*, 348 U.S. 952 (1955).

14 *United States v. Doherty*, 969 F.2d 425, 428 (7th Cir.), *cert. denied*, 113 S.Ct. 607 (1992), *appeal after remand*, 17 F.3d 1056 (7th Cir. 1994).

15 See Benton E. Gup, *Bank Fraud: Exposing the Hidden Threat to Financial Institutions* 25 (Bankers Publishing Co. 1990).

16 See memorandum from Jordan & Keys to the RTC Professional Liability Section, Dec. 7, 1994.

- To accomplish an unlawful or oppressive purpose or a lawful purpose by unlawful, oppressive or amoral means;
- One or more overt acts committed pursuant to the conspiracy;
- Damages caused by these acts.¹⁷

6. Aiding and abetting.

Arkansas has expressly adopted the principle of aiding and abetting:

All whom actively participate in any manner in the commission of a tort, or who command, direct, advise, encourage, aid or abet its commission, are jointly and severally liable therefor.¹⁸

The Arkansas courts have not, however, delineated the elements for establishing aiding and abetting liability in a civil context.

Other courts, in slightly different contexts, have elaborated at length on the elements of aiding and abetting and on the standard to be applied in determining whether the elements have been satisfied. In a leading case, one federal court, relying in part on *Restatement (Second) of Torts* § 876 (1979), set forth the following elements for aiding and abetting:

- the party whom the defendant aids must perform a wrongful act that causes injury;
- the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance; and
- the defendant must knowingly and substantially assist the principal violation.¹⁹

The court explained that, in practice, liability often turns on how much encouragement or assistance is sufficient to satisfy the "substantial assistance"

17 *Mason v. Funderburk*, 247 Ark. 521, 446 S.W. 2d 543, 548 (1969).

18 *Hinton v. Bryant*, 236 Ark. 577, 367 S.W.2d 442 (1963). See also *Cobb v. Indian Springs, Inc.*, 258 Ark. 9, 522 S.W.2d 383 (1975) (applying certain principles of aiding and abetting, i.e., advice or encouragement as substantial factor in causing tort, though not labeling them as such).

19 *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983).

requirement in the third element.²⁰ The court then applied the five factors suggested by the Restatement to determine whether there has been sufficient encouragement or assistance:

- nature of the act encouraged;
- amount of assistance given;
- presence or absence of the defendant;
- defendant's relation to the tortfeasor; and
- defendant's state of mind.²¹

Finally, the court cautioned that tort law is still developing, these factors are not perfect guides and other courts should remain free to adapt these elements as new cases test their usefulness in evaluating liability.²²

III. BACKGROUND TO WHITEWATER.

In 1978, Jim and Susan McDougal and Attorney General and Mrs. Clinton bought the land that came to be known as Whitewater. In the spring of that year, Mr. Clinton was preparing to make his first run for Governor, and Mrs. Clinton²³ was an associate at Little Rock's Rose Law Firm. Jim McDougal was not yet a banker but active in real estate development, his political work for Senator J. William Fulbright having come to an end with the Senator's defeat in 1974.²⁴ Susan McDougal was embarking on a career in real estate sales and advertising.

²⁰ *Id.* at 4, 8.

²¹ *Id.*

²² *Id.* at 489.

²³ Throughout, President Clinton shall be referred to by the title he then held (Attorney General of Arkansas, 1977-1979, Governor, 1979-1981 and 1983-1993, private citizen, 1981-1983, and President, 1993-present). For convenience, the First Lady shall be referred to throughout as Mrs. Clinton, although until circa 1982 she was known professionally as Hillary Rodham and a number of the documents cited herein use that name.

²⁴ Reporter's transcript of *United States v. McDougal* ("McDougal R.T.") at 907. This criminal case was filed in 1989. It alleged violations of 18 U.S.C. §§ 371, 657, 1006, 1014 and 1344. The allegations did not concern Whitewater; they involved another McDougal real estate project called Castle Grande. In 1990, McDougal was acquitted on all counts.

The McDougals had begun buying and selling land in the mid-1970s. They operated under the names of various entities that they formed and controlled.²⁵ In some of these entities, McDougal worked with his former employer, Senator Fulbright.²⁶ Typically, McDougal would locate tracts of land near lakes or streams, buy these tracts at a low price, subdivide the property and sell lots as vacation or retirement home lots on an installment basis, taking notes in return. To finance these projects, McDougal would borrow money from banks, including Union National Bank.²⁷ Some of the loans were made at a below-market interest rate. The loan documents state this was done as "an accommodation to the former Senator."²⁸ At Union Bank, McDougal dealt with loan officer Harry Don Denton, who later served as the chief lending officer at McDougal's Madison Guaranty.²⁹

Jim McDougal's real estate and political ventures before 1978 had often been intertwined. In addition to his ventures with Senator Fulbright, McDougal was a close personal friend of Jim Guy Tucker.³⁰ The press reports that they were roommates following Tucker's return to Little Rock from law school. McDougal also had become friendly with R. D. Randolph, a contractor who together with McDougal had worked for Senator Fulbright. Randolph served as McDougal's driver during McDougal's unsuccessful 1982 campaign for a seat in the United States House of Representatives. Randolph was described as one of McDougal's few close friends.³¹ In 1983, Randolph formed a construction company, West-Ark Construction, that worked almost exclusively on McDougal's real estate projects.³² As described below, some funds were transferred from Madison Guaranty through Randolph to McDougal-controlled

25 DKRT800185A. Documents with the prefix "DKRT" were produced to the RTC by David Kendall, counsel to the Clintons. For a list of document prefixes and source information, see Part X.A of this report.

26 Fulbright doc. 001267-68. The Senator took credit for financing McDougal in the real estate business.

27 WRTC00132. For convenience, this bank shall be referred to as "Union Bank."

28 WRTC00735. Union Bank made a number of loans to McDougal in the late 1970s. Almost without exception, the cursory loan write-ups referred to Senator Fulbright. *E.g.*, WRTC00159; WRTC00162-65. *See also* WRTC00714.

29 WRTC00189; WRTC00124; RTCKC8829; Denton Interview, Apr. 28, 1994, at 1.

30 They met circa 1966. McDougal was a friend of one of Tucker's sisters. They became better acquainted while Tucker was in college and McDougal was working for Senator McClellan. RIC0107257-260.

31 Pat Harris Deposition, Feb. 17, 1995, at 105:5-106:12.

32 R. D. Randolph Interview, June 7, 1994.

entities that the McDougals managed and either owned outright or owned together with others, such as Senator Fulbright.

By mid-1977, the McDougals had an interest in at least four entities: Rolling Manor, Inc.; Flowerwood Farms, Inc.; McDougal & Associates/Pembrook Manor; and Great Southern Land Company.³³ The McDougals' business interests, as reported in their personal financial statement dated May 31, 1979,³⁴ included stock or partnership interests in all these entities. In later years, funds flowed from or through each of these entities to Whitewater. Little is known about the activities of these entities; the RTC's subpoenas have yielded relatively little information on this subject. A letter dated July 25, 1977 from Jim McDougal to Don Denton of Union Bank contains a brief description of all these entities except Great Southern Land.³⁵

Rolling Manor. Rolling Manor was a 2,000 acre development in Faulkner County,³⁶ which is directly north of Pulaski County, in which Little Rock sits. Jim McDougal described Rolling Manor as an entity owned equally by Senator Fulbright and himself. The letterhead of Rolling Manor correspondence dated August 22, 1977 to Don Denton identifies McDougal as President and Senator Fulbright as Chairman of the Board.³⁷ In the July 25, 1977 letter to Denton, McDougal states,

Over the past three years this corporation has subdivided approximately 1500 acres of land. All but 102 Acres of its land has been sold. The corporation owes Senator Fulbright and me \$484,500.00 for the 1500 Acres we transferred to the corporation. Senator Fulbright and I owe Union National Bank \$159,000, which is a portion of the purchase price of the land We propose to retire this debt . . . using the proceeds of the land payments Rolling Manor, Inc. now has a cash flow of about \$80,000 annually.³⁸

33 WRTC00189-91; RTCKC35206.

34 CBF0265.

35 WRTC00189-191.

36 RTCKC35203-06.

37 WRTC00210.

38 Senator Fulbright and Jim McDougal borrowed \$125,000 from Union Bank on February 24, 1975 to "purchase 1200 acres real estate near Conway, Ark." WRTC00159, WRTC00217. Although the indicated acreage is different, this loan appears to have related to the purchase of the Rolling Manor property. A balance sheet for Rolling Manor dated October 1, 1983 reflects no debt and approximately \$109,000 of notes receivable and land. RTCKC9766.

Flowerwood Farms: McDougal and his wife were the sole owners of this company. Documents variously describe it as owning 223 acres west of Lake Maumelle (northwest of Little Rock) or as owning land near Kingston, in Madison County.³⁹ Flowerwood Farms, formed in May 1976, "is now engaged in the development and sale of 223 acres . . . purchased . . . on March 20, 1977 . . . to date we have had sales of \$208,000. . . ."⁴⁰ As of August 22, 1977, Flowerwood Farms had remaining inventory of just seven of the original 43 tracts that were subdivided.⁴¹

McDougal and Associates/Pembroke Manor: McDougal & Associates was an Arkansas limited partnership; McDougal owned a one-half interest and was the general partner.⁴² He states, "McDougal & Associates owns Pembroke Manor, Inc. The assets of the partnership and the corporation consist almost entirely of well seasoned notes and mortgages secured by real property."⁴³ Pembroke owned 50 acres in the Little Rock area.

Great Southern Land: As stated, little is known about this corporation's activities. It was owned by Jim and Susan McDougal.⁴⁴ It, like the others, has later financial links to Whitewater. In addition, it acquired some real estate from Whitewater in late 1986. See Part VIII.C below.

In the late 1970s, these were the McDougals' most significant real estate interests; the McDougals' personal financial statement dated May 31, 1979

39 WRTC00189-91; RTCKC35203-06.

40 WRTC00190.

41 WRTC00210. A later balance sheet for Flowerwood Farms, dated September 30, 1983, reflected total assets of \$492,572, mostly comprised of \$233,800 of notes receivable and \$237,552 of land. At that date, the company had a single note payable to First National Bank of \$61,691. The remainder, \$428,167, represented Flowerwood Farms' stated net worth. RTCKC9764.

42 WRTC00189. The other partner was from Wisconsin. PMS0153.

43 As of October 1, 1983, a balance sheet for McDougal & Associates reflects total assets of \$120,784, consisting substantially of notes receivable (\$42,650), land (\$79,000) and a credit for deferred income. RTCKC9763. The company apparently had no liabilities or borrowings, and Pembroke Manor owned 50 acres of land with an estimated market value of \$100,000. *Id.*

44 A Small Business Administration Statement of Personal History signed by Susan McDougal and dated September 23, 1983 states that the McDougals owned 50 percent of Great Southern Land. RTCKC35203-06. An FDIC Report of Examination as of March 12, 1984 on Madison Bank & Trust Company states that the McDougals owned 90 percent of Great Southern Land. FDIC00046. The other owners are unknown.

disclose no others. As the years went by, the number of entities that McDougal controlled grew steadily. See Chart 2 for a list of some such entities.⁴⁵

IV. 1978-1982: THE INITIAL PHASE OF THE PROJECT.

A. 1978-1979: The original purchase of the land and the creation of the company.

1. The purchase of the land and the financing of that purchase.

Whitewater consists of 230 acres, more or less, in Marion County, which is in north central Arkansas, not far south of the Missouri border. Whitewater is bounded on the north by Crooked Creek and on the east by White River, a major river that runs through much of the state.⁴⁶

The parcel that became Whitewater, along with another 3,000 acres of nearby land, spent years tied up in an Oklahoma bankruptcy court. In 1978, it became available for sale. Six Marion County businessmen, including James N. Patterson (the President of Citizens Bank of Flippin⁴⁷) and Kearnie Carleton (the chairman for Marion County of President Clinton's 1978 campaign for Governor), formed 101 River Development, Inc. to buy the land. The press reports that the group, before purchasing the property for \$1.4 million (roughly \$438 an acre), lined up 15 sets of buyers.⁴⁸

One such set of buyers consisted of the McDougals and the Clintons. On June 15, 1978, McDougal, for himself and for Attorney General Clinton, accepted the seller's offer to sell "Tract 2A . . . containing 220 acres, more or less" for \$880 an acre, and he tendered \$20,000 as earnest money.⁴⁹ On

45 With the exception of Madison Investment, each of the entities listed on Chart 2 has some sort of financial connection, direct or indirect, with Whitewater, as described below.

46 DKRT900135; DKRT900087. See Chart 3 for a map of the property.

47 Citizens Bank of Flippin was also known as Citizens Bank & Trust. In July 1986, Citizens Bank became 1st Ozark National Bank. For convenience, this bank shall be referred to as Citizens Bank throughout.

48 *The New York Times*, Feb. 7, 1994.

49 DKRT800285. Chris Wade of Ozarks Realty acted as broker. He had served on the board of directors of Citizens Bank of Flippin. WRTC00775. In 1978, he owned 2,075 shares of Citizens Bank stock, which he valued at \$142,250. In 1982, he owned 1,475.5 shares of Citizens Bank stock, which he valued at \$93,325. WRTC00762; WRTC00759. Wade's name surfaces frequently. He ended up owning roughly 60 percent of the Whitewater land. He went
(continued...)

August 2, 1978, the McDougals and the Clintons purchased 230.24 acres from 101 River Development for \$202,611.20.⁵⁰

The McDougals and the Clintons purchased the land in their own name (the corporate entity was not created until June 1979) but without contributing any equity themselves. In June, they borrowed the \$20,000 in earnest money from Union Bank (in the names of Attorney General Clinton and Jim McDougal).⁵¹ The loan was unsecured. The bank obtained a financial statement from the McDougals but apparently did not obtain a financial statement from the Clintons.⁵²

On August 2, the McDougals and the Clintons financed the remaining amount due on the purchase with a \$182,611.20 mortgage from Citizens Bank of Flippin in the names of the Clintons and the McDougals.⁵³ The closing statement reflected cash due at closing of \$21.50. A month after closing, this was increased to \$374.50, to cover a survey that had cost \$353.⁵⁴

The \$20,000 Union Bank loan was a demand note due on June 19, 1979, bearing interest of 10 percent on the outstanding balance.⁵⁵ The \$182,611.20 Citizens Bank loan was a six month demand note bearing interest of 10 percent on the outstanding balance.⁵⁶ The Citizens Bank loan was renewed nine times, and ultimately paid off in 1992.⁵⁷

49(...continued)

bankrupt in 1989. On May 12, 1992, almost 14 years after the McDougals' and the Clintons' purchase of the property, Ozark Air Services, a company owned by Wade (but, unlike Wade, not in bankruptcy), paid off the original Citizens Bank mortgage. CBF0435; CBF0432.

50 DKRT900482; the warranty deed is DKRT100457-59.

51 DKRT900145. Union Bank was later purchased by Worthen Bank. Worthen itself was purchased by Boatmen's Bank in the summer of 1994.

52 Union Bank still had no financial information on the Clintons six weeks later when the bank bought a participation in the mortgage loan. WRTC00153.

53 A short form of mortgage was recorded at Book 240, pages 349-349A, Marion County Records, on August 3, 1978. DKRT800940-41.

54 DKRT800656-58.

55 DKRT900145.

56 DKRT900087

57 CBF0271 (Nov. 9, 1979); CBF0275 (Aug. 5, 1980); CBF0282 (Aug. 5, 1981); CBF0322 (Nov. 1, 1982); DKRT700112 (Oct. 14, 1983); DKRT700113 (Nov. 26, 1984); CBF0393 (Mar. 26, 1987); DKRT700417 (Apr. 4, 1988); DKRT700403 (Jul. 15, 1988); CBF0434 (May 12, 1992).

The banks' records reveal only limited information on the McDougals' financial situation in 1978. While its accuracy has not been verified, a personal financial statement they signed dated May 31, 1979 claims a net worth of \$610,581 on assets of \$885,931. Of their assets, all but \$46,200 was real estate or entities that owned real estate; just \$11,700 was liquid.⁵⁸ The McDougals owed \$273,350 to banks, individuals and a related business entity. No information is available about the McDougals' income, or sources of income, in these years.

The Clintons' net worth in 1978, when they purchased Whitewater, is not known.⁵⁹ That year they reported \$54,593 of earned income: \$26,500 from Mr. Clinton's position as Attorney General of Arkansas; and \$28,093 from Mrs. Clinton (primarily from the Rose Law Firm).⁶⁰

The earliest personal financial statement available for the Clintons is dated May 21, 1981.⁶¹ The Clintons reported a net worth of \$159,500 and total assets of \$241,000. Besides the value of two houses, the Clintons reported approximately \$48,000 of cash and securities. Thus, for the Clintons, the Whitewater debt was substantial given their net worth in 1981.⁶² It appears fairly certain that the same could be said if the Whitewater debt were compared to the Clintons' net worth in 1978. The Clintons' net worth probably was lower in 1978 than in 1981, as 1978 was before and 1981 after Mrs. Clinton began the commodities trading that netted her profits of almost \$100,000.⁶³

58 CBF0265.

59 Apparently both banks loaned the money without obtaining a personal financial statement from the Clintons, although the banks did have some information on the McDougals. The Union Bank documents state that the Clintons did not submit any financial information. WRTC00153. The Citizens Bank documents do not refer to or analyze any such information, nor do they explain why Citizens Bank was willing to finance the sale without equity from the borrowers.

60 Their 1978 income tax return reflects salaries of \$51,173 and business income of \$3,420. DKRT900698-716.

61 CBF0280.

62 These obligations were the joint responsibility of the Clintons and the McDougals. As of May 21, 1981, it appears that the Clintons' Whitewater interests (the land and the debt) were included on their personal financial statement but without any values. CBF0280.

63 The Clintons received \$98,977 (net) in commodities trading profits in 1978 and 1979. DKRT900707; DKRT800013. This trading is beyond the scope of this investigation. No connection has been found between it and Madison Guaranty or Whitewater. Jim Blair, who press accounts have mentioned in connection with Mrs. Clinton's commodities trading, plays a role with respect to Whitewater briefly in 1992, first in connection with the final payment of the mortgage loan on the Whitewater property and then in connection with the Clintons' sale of their remaining interest in Whitewater to McDougal.

Union Bank took a 50 percent participation in the loan.⁶⁴ The Union Bank credit application read in part:

Background

This loan is a participation from Citizens Bank, Flippin, in a total loan of \$182,611.28.

McDougal closely associated with Senator J. W. Fulbright. Has been associated with UNB since 9/9/70 personally and through some of his business enterprises such as McDouglas [sic: McDougal] & Associates, Pen-Brooke [sic: Pembroke] Manor, Inc., Roland [sic: Rolling] Manor, Inc. and Flowerwood Farms, Inc. All experience satisfactory.

Clinton, Attorney General and Governor Elect, has had loans with UNB since 4/19/77. Past and present experience satisfactory. . . .

Financial Information

James B. McDougal's financial statement dated 3/21/78: total assets of \$975,245, total liabilities of \$424,054 for a net worth of \$551,191.

.

Bill Clinton: No financial information available.

Clinton's debt individually totals \$27,211 unsecured.

Evaluation of Risk

Due to the individuals and the collateral involved, the risk is minimal.⁶⁵

The Citizens Bank and Union Bank loans remained the personal obligations of the McDougals and Clintons after Whitewater was incorporated in June 1979. Whitewater's initial financial records, however, indicate that Whitewater owed each of them \$101,305, or one-half of the total balance of these loans.⁶⁶

64 CBF0258.

65 WRTC00153. Although Citizens Bank may not have been aware that the McDougals and the Clintons contributed no equity to the purchase, Union Bank, by virtue of having financed the earnest money, had sufficient information when it purchased an interest in the Citizens Bank mortgage to realize that the purchasers had contributed no equity.

66 DKRT800170.

It was not until the Citizens Bank loan was extended for the sixth time in November 1984 that this loan became an obligation of the corporate entity.⁶⁷

The McDougals and Clintons renewed the Citizens Bank mortgage loan on November 9, 1979. While interest had been paid in quarterly installments, the original principal balance of the loan (\$182,611) remained outstanding. The renewed loan was scheduled to mature on August 5, 1980, and had a stated interest rate of 10 percent, as did the original loan.⁶⁸

The Union Bank loan was extended on three occasions between June and December 1979, each time for the original \$20,000 balance. The first extension, on June 19, 1979, saw the stated interest rate increase from 10 percent to 10.5 percent.⁶⁹ The second extension, on September 17, 1979, saw the stated interest rate increase to 11.5 percent.⁷⁰ On the third extension, on December 17, 1979, the stated interest rate increased to 13 percent. This extension, unlike the previous two, was for six months.⁷¹ All three extensions were executed by Governor Clinton and Jim McDougal.

In later years, the parties incurred other bank debt, which shall be described below. The other debt consisted principally of a \$30,000 loan for a prefab house, a \$30,000 loan for working capital, and \$20,000 to cover some delinquent interest.⁷²

2. Whitewater, the corporation.

As noted, originally the Clintons and the McDougals held the land as individuals. On June 18, 1979, roughly ten months after they purchased the land, they formed Whitewater Development Company, Inc. and transferred the land to the Company, subject to the existing mortgage.⁷³ On September 30,

67 DKRT700113 The McDougals and Clintons also signed the November 1984 note as individuals.

68 CBF0271.

69 DKRT900147.

70 DKRT900151.

71 DKRT900155. On December 24, 1979, an unidentified payor paid \$573 on this loan; this is the first of the 11 payments on bank debt made by payors who have not been identified. See the preliminary observations in Part I of this report.

72 See Chart 5 for a time line listing the bank debt.

73 DKRT800938-39; DKRT900619-22. Generally speaking, in this report both the land and the corporation are referred to as "Whitewater." On the occasions where one must

(continued...)

1979, the McDougals and the Clintons executed a warranty deed transferring title to the Company.⁷⁴ On November 8, 1979, a corrected deed from 101 River Development, Inc. to the McDougals and the Clintons was executed, apparently for all 230 acres of Whitewater. (The deed says it corrects an error in the description.) The deed was recorded on December 19, 1979.⁷⁵

It is generally stated in the press that the McDougals became shareholders and officers of Whitewater (Jim as president and Susan as secretary), while the Clintons became mere shareholders.⁷⁶ It also is generally stated that the Clintons and the McDougals owned all the stock, and that each couple owned 50 percent.⁷⁷

The documentary evidence on these points, however, is contradictory. Both the number of shares issued and outstanding and the actual stockholders of record are difficult to determine. Charles James, the accountant for this venture (as well as for other McDougal ventures⁷⁸), is identified as the incorporator as well as the president of the company in the Articles of Incorporation dated June 14, 1979.⁷⁹ A Subchapter S election form filed with the IRS⁸⁰ reflects a distribution of the company's 1,000 shares of common stock by which, for a time at least, Charles James held 250 shares, Susan McDougal held another 250 shares and Mrs. Clinton held 500 shares.⁸¹

73(...continued)

distinguish between the two, the corporation is referred to as "the Company." Harrison & Brown, Little Rock, incorporated the Company. DKRT900122.

74 DKRT800938-39.

75 DKRT100461-62.

76 *The New York Times*, Feb. 7, 1994.

77 The press often refers to the McDougals and the Clintons as "partners" in Whitewater. Whitewater was a corporation, not a partnership. Hence, they were "shareholders." DKRT800292.

78 Charles James Interview, Aug. 3, 1994.

79 DKRT800292-95.

80 Whitewater Development Company never filed subchapter S tax returns. The only explanation available is a handwritten memorandum in the Kendall production (DKRT900812) in which the identities of the author and receiving party are not legible. The memorandum states, "we did not file a form 1120S for Whitewater Development Company, Inc. for the initial return of May 31, 1980 because the IRS rule concerning passive income prohibited us from being a subchapter S corporation."

81 DKRT900618.

Other documents contradict these documents. A stock certificate issued to Mrs. Clinton dated June 18, 1979, four days after the date of incorporation, is for 150 shares.⁸² That certificate was issued by Jim McDougal as president of the Company. An FDIC Report of Examination as of August 15, 1986 on Madison Bank & Trust lists McDougal and his wife as 45 percent owners of Whitewater.⁸³ Another Report of Examination as of March 12, 1984 lists McDougal and his wife as 100 percent owners of Whitewater.⁸⁴ And a Small Business Administration Statement of Personal History, signed by Susan McDougal in September 1983, lists her as the owner of 50 percent of Whitewater "indirect through ownership of husband."⁸⁵

On this record, it cannot be determined whether the Clintons and the McDougals owned equal shares in Whitewater. The best contemporaneous evidence seen for equal ownership is Whitewater's general ledger, which allocates the \$1,000 of company capital stock equally to the partners.⁸⁶

The parties also found the record confusing. In an unsigned letter dated April 15, 1991, Mrs. Clinton indicated that she was less than certain who owned the Company:

Based on the records available to me, Susan [McDougal], Charles [James] and I are the only registered shareholders of the company. If anyone has any other information that contradicts this, please advise me. . . .⁸⁷

The question of who served as Whitewater's president also is difficult to answer; here too, the documents are contradictory. In addition to being Whitewater's incorporator, the accountant Charles James apparently served as

82 DKPT900616 and DKRT900111-12, Stock Certificate No. 1, suggest that Mrs. Clinton received 150 shares.

83 FDIC00120.

84 FDIC00046.

85 RTCKC35203-206. The tax returns of the Clintons, the McDougals and the Company shed no light on this issue.

86 DKRT801103, DKRT800049-50. Additionally, an "Assignment of Interest Separate From Certificate and Indemnity Agreement" dated December 22, 1992 and signed by the Clintons and the McDougals states, "Bill Clinton and Hillary Rodham Clinton, husband and wife, jointly own fifty percent (50%) of the issued and outstanding shares of capital stock of Whitewater Development Corporation, Inc." 212-00006902.

87 RIC003636.

its first president.⁸⁸ In his interview, he said that he served as president only for a brief time and only for purposes of incorporating the company.⁸⁹ However, a notarized document, purportedly executed early in 1980, still shows him as president.⁹⁰

Moving into the 1980s, the documents continue to contradict one another. A set of Covenants and Restrictions for Whitewater Estates, dated September 17, 1980, was signed by Jim McDougal as president.⁹¹ A series of unsigned Corporation Franchise Tax Report forms dating from the early to mid-1980s show Charles James as president as early as January 1, 1980 and as late as January 1, 1986.⁹² In a similar document, Jim McDougal is shown as president as of January 1, 1987.⁹³ (Jim McDougal also was listed as president on Citizens Bank promissory notes dated November 26, 1984, March 26, 1987 and April 4, 1988.⁹⁴) Finally, Mrs. Clinton is listed as president as of December 31, 1987 and December 31, 1988.⁹⁵ Of all the tax forms, only the last two were signed, and both of them were signed by Mrs. Clinton on June 21, 1990.

3. Project marketing and management.

Regardless of who served as officers, the marketing of Whitewater's lots was left to Ozarks Realty Company, a small real estate firm in Flippin owned in part by Chris and Rosalee Wade.⁹⁶ Whitewater's financial records suggest

88 DKRT800294.

89 Charles James Interview, August 3, 1994.

90 DKRT800292-95. Compare this form of the Articles of Incorporation with DKRT700327-29. It is evident that somebody added the word "president" and Susan McDougal's signature line after the initial filing of the document with the Secretary of State. See also DKRT800254-55, a warranty deed dated January 18, 1980 that Charles James signed as president and Susan McDougal signed as secretary.

91 DKRT800512-16.

92 DKRT900845 (1980); DKRT900841 (1981); DKRT700608 (1982); DKRT700606 (1983); DKRT700605 (1984); DKRT600105 (1985); DKRT101061 (1986).

93 DKRT700603 (1987).

94 DKRT700113; CBF0393; DKRT700417.

95 DKRT700619 (Dec. 31, 1987); DKRT700618 (Dec. 31, 1988).

96 RTCKC39686. In his initial interview, Wade's recollections of his Whitewater marketing activities were hazy. When an attempt was made to interview Wade again after completion of the document review, Wade, through counsel, declined to be interviewed, although he said he
(continued...)

that marketing brochures were prepared. Apparently, the investors anticipated that many prospective buyers would be people from out of state interested in vacation property.⁹⁷

Ozarks Realty had acted as the broker when the McDougals and the Clintons purchased the land.⁹⁸ In the coming years, Ozarks Realty would act as broker for most of Whitewater's lot sales. In these years, Wade and McDougal also were to work together on several projects other than Whitewater, most notably the Campobello Island project in Canada.⁹⁹

In all, Ozarks Realty or Wade would receive somewhere between \$72,998 and \$79,519 in commissions and other payments related to Whitewater.¹⁰⁰ Most of this seems reasonably well documented except for \$28,000 received in March and April 1985. That \$28,000 is discussed in detail in Parts VII.B.7-VII.B.8 below. Also as detailed below, in May 1985, a company owned by Wade acquired all the then-remaining inventory of unsold Whitewater lots--24 of the 44 lots.

Turning from marketing and sales to finance, the available documents suggest that Jim McDougal managed Whitewater's finances from the outset at least until circa 1986, when he suffered a nervous breakdown and moved to California.¹⁰¹ The McDougals and employees of their various enterprises

96(...continued)

would consider answering written interrogatories. Thereafter, Wade pleaded guilty to two felonies. *Wall Street Journal*, Mar. 22, 1995, at B6. Currently, access to Wade is being arranged through the Independent Counsel.

97 See 212-00008272-79. Roughly \$4,500 was spent on advertising. Approximately half of the 25 individual purchasers were from out of state.

98 DKRT800285.

99 Wade interview, May 12, 1994, at 1-4. Chris Wade received large loans from Madison Guaranty. RTCKC39676, 733, 755. Wade worked for McDougal at Campobello and held an equity interest in the project, which was 100 percent financed by Madison Guaranty. Wade interview, May 12, 1994, at 1-4; PMS0334.

100 The ambiguity exists because it is not clear that some commissions that reportedly were earned were, in fact, paid. Of the total, \$39,284.12 represents payments other than commissions (this includes the \$28,000 mentioned in the next sentence of text) and the remainder represents commissions.

101 Charles James kept the books but claims ignorance or lack of recollection on most points. Witnesses state that McDougal often became enthusiastic about a project, only to turn his attention elsewhere and leave the details to others, or more likely to nobody. A number of McDougal's colleagues from his Madison Guaranty days have been interviewed. While witnesses disagree about McDougal's level of control, nobody claims he ever had an eye for detail.

signed the Company's checks; while not all checks have been located, the available documents suggest that the Clintons never signed any of the Company's checks.¹⁰²

The available documentation does not include a corporate minute book for Whitewater. One excerpt from corporate minutes has been located, which was apparently drawn up at the request of a bank.¹⁰³ There is no indication that regular board meetings were held.

So far as one can determine from the available documentary evidence, little Whitewater financial information was transmitted to the Clintons. However, the Clintons did sign documents in connection with various loans and loan extensions. Letters to or from the Clintons were relatively infrequent; the available documents suggest that the Clintons wrote or received less than 20 letters pertaining to Whitewater between the project's inception in 1978 and the end of 1986.

After McDougal's health deteriorated, Whitewater's corporate filings were neglected until 1988-1990. Beginning circa 1988, Mrs. Clinton made payments of Whitewater's delinquent taxes and handled certain other matters, as described in Part IX.C below. Whitewater's 1987, 1988 and 1989 federal income tax returns (and its state franchise tax reports for 1987 and 1988) were filed in June 1990.¹⁰⁴

4. The investors' expectations.

In the documents received to date, nothing has been seen that expresses the parties' intent or expectations for the Whitewater project--no written plan, feasibility study or pro forma financial statement.¹⁰⁵ Thus, it has not been possible to determine what the Clintons and the McDougals thought they might earn by this venture, or what they thought it might cost them.¹⁰⁶ While direct evidence is lacking, there is much circumstantial evidence from which one can reconstruct the parties' probable intent. By examining the evidence produced to

102 With respect to Whitewater's debt, the Clintons did sign their own personal checks for the benefit of Whitewater.

103 CBF0312.

104 DKRT100597; DKRT100605; DKRT100614; DKRT700619; DKRT700618. See 212-0006765-66 (undated state franchise tax return for 1989 attached to a June 1993 letter).

105 The Company had limited accounting records at first. The first entries into the corporate general ledger to record cash transactions occurred in December 1979. DKRT-800051.

106 To date, none of the four principals has been interviewed. Charles James was interviewed, but he had few recollections.

date (such as list prices of the Whitewater lots) and by analyzing the Citizens Bank and Union Bank loans, an analysis has been prepared that we believe reflects the parties' reasonable expectations at the time of their investment, assuming (as proved to be the case) that they planned to subdivide the property into lots and hold it for orderly sale.

a. Contract for deed installment financing.

The Whitewater parcel was subdivided into 44 lots of various sizes.¹⁰⁷ These lots were held for sale to individuals. These lots were not sold subject to a mortgage. Instead, they were sold under the contract for deed method common in Arkansas and some other states.

When a house is purchased subject to a mortgage (or deed of trust), title is transferred to the buyer, but the bank or other lender has a lien, in the form of the mortgage or deed of trust. So long as the buyer makes the payments, the house belongs to the buyer. If the buyer misses payments, the bank can seek to foreclose on the property and take it away, a procedure that is fairly cumbersome in many states. In a contract for deed transaction, however, title remains with the seller until all contractual payments have been made by the buyer. Typically, the deed conveying title to the buyer is executed at sale but not delivered to the buyer. Instead, it goes into escrow, to be held until the payments have all been made.

This has several consequences, especially if the buyer defaults. In that case, all the payments made to date are deemed rent, and all the seller need do to take back the property is instruct the escrow agent to deliver the deed. The seller need not foreclose or resort to any other cumbersome mechanism. Conversely, the buyer lacks the protections, or at least the delay, that foreclosure affords. For this reason, contract for deed financing often is referred to as "the poor man's mortgage."¹⁰⁸

Contract for deed installment contracts were signed for most of the Whitewater lots that sold at retail. Most of these installment contracts included modest down payments, with the balance of the sales price due in periodic payments, typically over five to ten years.

107 DKRT900358.

108 7 Richard R. Powell & Patrick J. Rohan, *Powell on Real Property* § 938.20[1] (1991). Another consequence, less favorable to the seller, is that title for property tax purposes remains with the seller.

The interest rate received on such installment sales was capped by Arkansas' usury laws at 10 percent.¹⁰⁹ In contrast, the usury laws did not apply to the McDougals' and the Clintons' bank loans. Hence, they had no assurance that their loans would remain at or below 10 percent. The Citizens Bank loan was for six months, while the Union Bank loan was for a year; at renewal time, interest rates could rise.¹¹⁰ Thus, so long as the McDougals and the Clintons had short-term variable interest rate financing (which, in effect, is what they always had), they faced considerable interest rate risk. The notes they received from buyers were fixed, while their obligations to the banks effectively were not.¹¹¹

b. Project economics.

With this background, it is possible to analyze the project's economics. See Appendix, Chart 4, for a chart summarizing the numbers presented in this section of the report. As noted, no contemporaneous written analysis of the project's economics is available. Therefore, the available evidence has been analyzed in an attempt to reconstruct what the investors might have expected.

Overview: A project such as Whitewater almost always has negative cash flows at first. The land must be purchased and improved before sales begin. Even after sales begin, seller financing means that cash flows will stay negative for a time. Here, for example, the average down payment (approximately 10 percent) did not even cover the usual broker's commission for this project (approximately 15 percent). All these factors meant that cash flow could not become positive until enough lots have been sold so that payments on the

109 Until December 1982, Arkansas's usury law capped the rate of interest on any contract governed by Arkansas law at 10 percent. Ark. Const. of 1874, art. XIX, § 13 (amended 1982). On December 3, 1982, Amendment 60 to the Arkansas Constitution, now codified as Article 19, section 13, changed that limit to 5 percent above the Federal Reserve Discount Rate for 90 day commercial paper; a different rule applies to consumer loans and credit sales. These limits do not apply to certain loans on residential real property secured by a first lien. RTCKC30235. Some press accounts have asserted that Mr. Clinton signed this change in the law and suggested that he did so to benefit himself. However, the change came in the form of a constitutional amendment passed by the voters of Arkansas. It passed and took effect before Mr. Clinton returned to public office.

110 DKRT900087, DKRT900145. Because of these short terms to maturity, it is not likely that the banks expected that the primary repayment source would be the cash flow of the project. It is not known whether the banks expected the borrowers to obtain permanent financing or retire the loans from their personal assets, or whether they were satisfied to renew the loan annually (as they ultimately did).

111 This risk became a reality as interest rates rose to record level highs in the early 1980s. The Citizens Bank loan interest rate increased to 19 percent at the August 1981 renewal. CBF0282. Thus, the McDougals and the Clintons were paying the bank 19 percent but holding notes from buyers that yielded only 10 percent--that is, when the buyers were not defaulting.

promissory notes become significant. Here, sales were so slow that cash flow after debt service never became positive.

Anticipated expenses: The investors faced expenses in addition to the \$202,611 paid for the land and owed to the banks. Typically the improvements made to Jim McDougal's real estate projects were modest--a few roads, a little grading, perhaps some sort of septic or sewage system. That was true of this project as well. In addition, the Clintons and McDougals likely anticipated other cash needs for the project. All told, it is estimated that they anticipated spending up to \$93,000 to improve the real estate, pay expenses and fund debt service.¹¹² If so, the total expected financial commitment to the project would have been approximately \$295,000. Because this \$93,000 would have been paid out before sales began in earnest, the investors must have expected to finance this amount, perhaps by a combination of bank loans and advances from the assets of the partners.

Anticipated revenues: Turning from expenses to revenues, the list price for each of the 44 lots is known. Together, the list prices added up to \$459,000.¹¹³ Deducting 15 percent for estimated commissions and other closing costs would result in anticipated net sales proceeds of \$390,000.

Anticipated profits: Net sales proceeds of \$390,000 less a total investment of \$295,000 would yield anticipated net profits of approximately \$95,000; or \$47,500 each for the Clintons and McDougals.¹¹⁴ These profits would be realized over the life of the lot buyers' installment contracts, not all at once.¹¹⁵

B. 1979-1981: the years of land sales.

1. Operations and cash flow in fiscal year 1980.

The first sale, lot 40 located along the White River, did not occur until September 1979, a little more than a year after the purchase of the property.

112 Included are estimates of improvements and other costs of approximately \$46,000 (based on costs actually incurred), and interest on the loans in the "start-up" period of approximately \$47,000.

113 DKRT900358.

114 This calculation assumes that each couple actually had a 50 percent interest in the project. As discussed above, the documentary evidence is not definitive on that point.

115 To reiterate, the figures presented in this section do not reflect what actually happened. Instead, they represent the best estimate, based on available evidence, of what the McDougals and the Clintons may have projected would happen. The following sections of this report focus on what actually happened.

The available documents do not identify who signed the purchase agreement.¹¹⁶ A total of only six lots were sold through May 1980, 21 months after the purchase of the property.¹¹⁷ All lots were sold on installment. After commissions, only \$1,775 in cash remained from the down payments; Whitewater took promissory notes for the balance of the purchase price.

These modest revenues meant that the McDougals and the Clintons had to spend their own money to pay operating expenses and interest on the loans, as well as to fund capital improvements. Through May 31, 1980, interest paid to Citizens Bank and Union Bank amounted to \$35,294. Roads and other project improvements totaled \$25,052, and operating expenses totaled \$5,935. These expenses totaled \$66,281 or, net of cash received from lot sales, \$64,506.

The money used to pay these expenses came from various sources. Great Southern Land Company, a company controlled by the McDougals, paid \$26,393 some time before December 1979 for improvements and certain Whitewater operating expenses. Whitewater's financial records reflect a liability to Great Southern Land Company of this amount.¹¹⁸

In addition to this \$26,393, Whitewater's general ledger credited Great Southern Land Company and the Clintons with another \$20,260, consisting of \$10,130 each for payments made personally to fund debt service.¹¹⁹ The Clintons paid their portion by a personal check, dated December 28, 1978, for \$10,130.58, made out to the Great Southern Land Company.¹²⁰ Great Southern Land Company contributed a like sum.¹²¹ The \$20,260 approximately covered the interest payments made on the mortgage loan and the earnest money loan between November 1978 and August 1979.¹²²

116 DKRT900406-7.

117 The Company's fiscal year started June 1 and ended May 31. Hence the data often are presented with reference to fiscal years.

118 DKRT800170. This loan, like all of the loans to Whitewater from McDougal-controlled entities (other than Madison Bank & Trust), was not documented by a promissory note or other writing, and did not bear interest.

119 DKRT800170, May 31, 1980 adjusting entry.

120 DKRT801348.

121 DKRT800170.

122 Because they paid the money to Great Southern Land Company in 1978, the Clintons claimed the entire amount as an interest deduction on their 1978 income tax return even though the interest on the Whitewater debt was only partially due in 1978. DKRT900698-716. The press reports that tax experts differ as to whether this deduction was allowable. *The Wall* (continued...)

In 1979, the Clintons paid other expenses and made a capital contribution to the Company. On December 7, 1979, the Clintons disbursed \$2,900 to Whitewater. Of this amount, \$2,400 was an advance (and therefore an obligation on the part of the Company to repay the Clintons) and \$500 was designated to be the Clintons' contribution to the Company's paid-in capital.¹²³ The Clintons made other payments for the benefit of Whitewater, totaling \$9,590.02, to the banks. These include one check for \$4,599.64 on November 5, 1979 and two checks totaling \$4,990.38 on December 29, 1979 (one for \$4,752.88 and another for \$237.50).¹²⁴ These payments are summarized in the report prepared for the Clintons by James M. Lyons dated March 18, 1992.¹²⁵

To summarize, through May 31, 1980, the Clintons wrote checks totaling \$22,620 relating to Whitewater.¹²⁶ For the same period, McDougal and McDougal-related entities advanced a total of \$40,923 to Whitewater. (This is net of an \$1,100 Whitewater disbursement to Great Southern Land on December 11, 1979.¹²⁷) The McDougal advances came in four pieces. Two have already been described: \$26,893 for roads and improvements and \$10,130 for interest expense, both contributed by Great Southern Land.¹²⁸ The other two

122(...continued)

Street Journal, Feb. 7, 1994. Personal tax issues are not, however, within the scope of the RTC's inquiry.

123 DKRT800051; DKRT900994; DKRT800049-50; DKRT801103. This advance was not used for the payment of interest, as Whitewater made its first payment to a bank in May 1980. DKRT800053.

124 A copy of the canceled check for \$4,599.64 has not been located; copies have been found of the other two (DKRT801344; DKRT801346). In the aggregate, these amounts can be reconciled to the Clintons' 1979 personal tax returns by adding in their \$2,400 advance to Whitewater. DKRT800009.

125 After the initial story on Whitewater appeared in *The New York Times* in March 1992, the Clintons engaged James M. Lyons (who is a lawyer in Denver, Colorado) to reconstruct certain financial records of Whitewater. Among other things, Lyons determined the amount of money that the Clintons ultimately lost on their Whitewater investment. SN000000074-80. The "Lyons Report" will be discussed throughout this report, as appropriate. The payments described above have been reconciled to the Lyons Report. DKRT800133A. While the RTC has obtained the Lyons Report itself and a draft, requests for related documentation, such as canceled checks, have not yet been satisfied.

126 Amounts have been rounded.

127 DKRT800051.

128 Adjusting entry #4 at DKRT800170. As discussed above, this \$10,130 payment is separate and distinct from the \$10,130 check the Clintons wrote Great Southern Land.

consisted of \$1,000 from Flowerwood Farms advanced on February 21, 1980 and \$4,000 from McDougal himself advanced on May 5, 1980.¹²⁹

McDougal's advance of this \$4,000 marks the beginning of a practice of making a "just in time" deposit to Whitewater to avert an overdraft, or a belated deposit to Whitewater to cure an overdraft. McDougal's \$4,000 arrived on the same day that Whitewater disbursed \$4,352.63 for a quarterly installment of interest on the Citizens Bank loan. Absent the advance, Whitewater would not have had sufficient funds to make this payment.¹³⁰

Combining the McDougal/McDougal-controlled entity advances of \$40,923 with the Clintons' payments of \$22,620, the shareholders advanced and contributed a total of \$63,543 through May 31, 1980. This funded the estimated \$64,506 needed for operating expenses, interest and capital improvements previously described.

2. The bank debt as of August 1980.

In 1980, the earnest money loan was refinanced and the mortgage loan was extended:

Earnest money loan: On June 23, 1980, Whitewater disbursed \$21,346.29 to Union Bank in repayment of the \$20,000 earnest money loan taken out by Jim McDougal and Attorney General Clinton on June 19, 1978. The loan was repaid one week after its scheduled June 16, 1980 due date.¹³¹ The Company did not have the money to pay the loan.¹³² Instead, Jim McDougal personally borrowed \$20,000 on June 19, 1980 from the Bank of Cherry Valley¹³³ and deposited these funds into a Whitewater account on June 20, 1980.¹³⁴

One effect of this transaction was to reduce the Clintons' personal liability by \$20,000. Where the Union Bank loan had been signed personally by

129 DKRT800051, 053; DKRT900961.

130 DKRT901045; DKRT900166; DKRT901049.

131 DKRT901077; DKRT900155.

132 DKRT801244.

133 BCV0004. The press reports that, in later years, the Bank of Cherry Valley made a number of loans to Governor Clinton, including a \$50,000 unsecured loan that permitted Clinton to run a series of television advertisements in the last week of his 1984 gubernatorial campaign. The press also reports that Maurice Smith, president of the bank, was a friend of Governor Clinton and a long-time financial backer of Arkansas politicians.

134 DKRT900968; DKRT900155.

both Attorney General Clinton and Jim McDougal, the Bank of Cherry Valley loan was signed individually by Jim McDougal only. This is something that would occur again: the replacement of recourse financing by non-recourse financing, for which one or more of the shareholders was not personally liable.

Mortgage loan: Citizens Bank of Flippin extended and modified the mortgage loan on the Whitewater property for the second time on August 5, 1980. No principal had been paid; the principal balance remained at \$182,611, unchanged since the mortgage was originated in August 1978. The note was made due and payable in one year (on August 5, 1981), and the stated rate of interest increased from 10 percent to 11 percent. Governor Clinton and Jim McDougal each signed the promissory note.¹³⁵ At the same time, the Clintons paid Citizens Bank \$4,350 for one quarter's interest.¹³⁶

On August 23, 1980, the Clintons paid \$9,000 to an unknown payee.¹³⁷ Through a reconstruction of the Citizens Bank mortgage history, it has been determined that this payment was applied as principal to the outstanding balance of the Citizens Bank loan. The Clintons deducted the \$9,000 payment as interest expense in their 1980 federal income tax return.¹³⁸

Adding the \$4,350 in interest and the \$9,000 in principal to the \$22,620 paid in through May 31, 1980, the Clintons had spent \$35,970 of their personal funds on Whitewater since entering the venture in 1978. For the next six years the Clintons spent no further funds on Whitewater.¹³⁹

3. Developments in the fall of 1980.

a. The advance from Pembroke Manor and the model home on lot 13.

In the summer of 1980, no Whitewater lots were sold. Thus, by September 1980, a little more than two years after the McDougals and the Clintons had purchased Whitewater, only six of the 44 lots had been sold.

135 CBF0275.

136 DKRT800108; DKRT800133A.

137 The payee line on the check was not completed, but the endorsement on the check indicated that it was deposited at Citizens Bank of Flippin. See DKRT800533.

138 Their 1980 tax return reports this \$9,000 was paid to Jim McDougal. DKRT800108. The Lyons Report questions the appropriateness of the \$9,000 deduction taken by the Clintons. DKRT800116A.

139 See Chart 6

The McDougals and the Clintons decided to install a house on lot 13, which is close to the entrance to the project, apparently to make the property more attractive to would-be buyers.¹⁴⁰ They purchased a prefab house for \$20,237 and paid for it by a check from the Whitewater checking account on October 13, 1980.¹⁴¹ With utility hook-ups and other related items, the total cost of the house capitalized on Whitewater's general ledger was \$28,419.50.¹⁴² All of these costs were incurred by December 1980.

Whitewater did not have the money to pay for the house and related expenses. Whitewater's revenues did not cover payments on the bank debt, let alone allow for improvements such as a prefab house. Therefore, the money for the house had to be advanced by the venturers or borrowed elsewhere.

Initially the money came from Pembroke Manor, a company controlled by McDougal that at one time in the mid-1970s had owned 50 acres in the Little Rock area. On September 27, 1980, Whitewater received a \$32,000 advance from Pembroke Manor.¹⁴³ Four months later, on December 31, 1980, \$28,000 of this advance apparently was repaid from proceeds of Mrs. Clinton's \$30,000 loan from Madison Bank & Trust (formerly known as the Bank of Kingston).¹⁴⁴

b. The McDougals' acquisition of Madison Bank and Mrs. Clinton's \$30,000 loan from Madison Bank.

The bank acquisition: In October 1980, Jim McDougal, Steve Smith (a top aide to Governor Clinton in his first term), Jim Guy Tucker and others purchased a controlling interest in what was then called the Bank of Kingston. In 1981, McDougal changed the name of this bank to Madison Bank and Trust Company ("Madison Bank").¹⁴⁵ This bank, which was a commercial bank, should not be confused with Madison Guaranty Savings & Loan, which was an entirely separate institution that McDougal acquired later, as described below.

At its acquisition, Madison Bank was a bank of \$1.6 million in assets located in Kingston, Arkansas.¹⁴⁶ Kingston is an unincorporated town of

140 CBF0440.

141 DKRT801370.

142 DKRT800059.

143 DKRT901094, DKRT800059.

144 DKRT801368; DKRT801036.

145 For convenience, the name "Madison Bank" shall be used hereinafter.

146 VCH000385; WRTC00118, 125.

about 200 people in Madison County, deep in the Ozarks.¹⁴⁷ Madison Bank had been founded in 1911 by the Bunch family. In 1980 the Bunch family still ran the bank out of the original building.¹⁴⁸ McDougal purchased 190 shares of the bank's stock, or 45 percent of the bank's common stock. Steve Smith and his father Austin Smith already owned some Madison Bank stock. When McDougal bought his stock, the Smiths bought more, increasing the Smiths' holdings to 45 percent.¹⁴⁹

To buy his Madison Bank stock, McDougal borrowed \$270,000 from Union Bank, the same institution that had loaned then-Attorney General Clinton and McDougal the earnest money for the purchase of Whitewater.¹⁵⁰ Union Bank also loaned the Smiths the money they used to buy their stock.¹⁵¹ McDougal and Smith moved to Kingston and began running Madison Bank. Smith became president and McDougal served as Chairman of the Board.¹⁵²

In February 1981, Jim and Susan McDougal borrowed \$105,000 from Union Bank to buy more stock in Madison Bank.¹⁵³ It appears that an infusion of capital was needed due to the bank's rapid growth. The credit application observes that in the four to five months since the change in control of the bank, deposits increased from \$1.4 million to \$3.6 million. In the "Evaluation of Risk" section the loan officer observes, "substantial expenditures on modernization of banking house, internal system and advertising have not resulted in profits, however, officer is not concerned with absence of profit at this point." With the additional advance, the total amount of McDougal's

147 DKRT800513A.

148 DKRT800465A-68A. Despite subsequent changes of control, members of the Bunch family still operate the bank today.

149 WRTC00125; WRTC00099.

150 WRTC00125. McDougal borrowed an additional \$105,000 on February 26, 1981 from Union Bank to purchase additional Bank of Kingston shares. This increased his total borrowings for Bank of Kingston stock to \$375,000.

151 WRTC00123; WRTC00120; WRTC00109; WRTC00124.

152 DKRT800466A.

153 WRTC00109; WRTC00125. It is difficult to determine from the loan application how much stock the McDougals bought and what percentage of the total equity they held. The FDIC Report of Examination as of August 24, 1984 of Madison Bank states that the McDougals owned 260 of the 634 shares of stock then outstanding (41%), while Steve and Austin Smith owned 250 shares (39%). FDIC00019, 22, 65-66. These percentages are lower than the percentages that the McDougals and the Smiths held when the McDougals first bought into the bank. Apparently additional shares had been issued to others in the interim, diluting the interests of the Smiths and McDougals.

outstanding Union Bank loans increased to \$396,500.¹⁵⁴ Without profits or dividends, it is not clear how the McDougals planned to pay back this loan.¹⁵⁵

Mrs. Clinton's loan: In December 1980, two months after McDougal acquired Madison Bank, Mrs. Clinton obtained a \$30,000 loan from Madison Bank. The loan, originated on December 16, 1980, carried a stated rate of interest of 20 percent. It was a balloon payment loan, with interest and principal due in one payment of \$36,000 on December 16, 1981.¹⁵⁶ On December 29, 1980, Whitewater received a \$30,000 deposit. A deposit slip has not been located to identify the source, but the funds likely came from Mrs. Clinton and thus indirectly from Madison Bank.¹⁵⁷ As stated, this loan allowed Whitewater to repay most of the earlier Pembroke advance, which it did on December 31, 1980.¹⁵⁸ The Madison Bank loan was eventually repaid in full (after modest previous repayments) in October 1983, in part with proceeds of a loan obtained personally by Governor Clinton from Security Bank of Paragould.¹⁵⁹

Madison Bank's loan to Mrs. Clinton was supposed to be secured by Whitewater lot 13.¹⁶⁰ But on December 16, 1980, when the loan originated, Mrs. Clinton did not own lot 13; the Company did.¹⁶¹ That was rectified on December 28, when a warranty deed was executed transferring title to lot 13 from Whitewater to Mrs. Clinton.¹⁶²

154 See WRTC00125. Of the total, \$375,000 relates to the purchase of Madison Bank stock and \$21,500 relates to a car loan. WRTC00151.

155 See Parts VI.A and VII.C for a discussion of the steps that the McDougals took at various times to make payments on this loan.

156 DKRT900163.

157 DKRT800451.

158 DKRT801368.

159 DKRT200758; MBT000000020. Paragould is in the northeast corner of Arkansas, north-northeast of Jonesboro. See Chart 5 for a schematic history of this loan.

160 DKRT900019.

161 Earlier, on October 16, 1980, Citizens Bank released lots 7 and 13 to the McDougals and Clintons. CBF0247. The McDougals and the Clintons had transferred the property to the Company on September 30, 1979. DKRT900175.

162 DKRT900021.

c. The sale of lot 7 and a paydown of the Citizens Bank mortgage loan.

On October 14, 1980, a week before Jim McDougal obtained control of Madison Bank and two months before Mrs. Clinton obtained lot 13 and borrowed \$30,000 from Madison Bank, Whitewater sold lot 7 to its broker, Chris Wade, for \$33,250.¹⁶³ Wade paid cash for the lot, the source of which is unknown. Two days after purchasing lot 7, Wade sold it to M.T. and Betty Bronstad for \$45,000.¹⁶⁴ The terms of this transaction have not been discovered (e.g., whether it was cash or installment).¹⁶⁵

Whitewater used \$30,370 of the \$32,720 net cash paid by Wade to make a principal payment on the Citizens Bank loan, reducing its principal balance to \$143,241. After other closing expenses, Whitewater received net proceeds of \$2,349.95.¹⁶⁶ The documents do not reveal how the \$30,370 Citizens Bank paydown was negotiated, nor do the documents list release prices.

Two days after the lot 7 sale, on October 16, 1980, Citizens Bank released lot 7 and lot 13 to the McDougals and the Clintons.¹⁶⁷ Apparently a transaction involving lot 13 was contemplated, since lot 13 was released at this point although Madison Bank's loan to Mrs. Clinton did not occur until December 1980.¹⁶⁸

163 DKRT900063-64 Lot 7, at 29.96 acres, is the largest of the 44 lots. It is strategically placed overlooking the confluence of Crooked Creek and the White River. Its original list price was \$45,500. DKRT100996; DKRT900358. Wade bought it for 73 percent of that amount but he paid all cash. In a May 12, 1994 interview, Wade stated that President Clinton had originally purchased the lot. Wade Interview, May 12, 1994, at 8. Other accounts claim that the lot was "reserved" for President Clinton, who talked of retiring there after he finished his career in politics. The available evidence contains nothing suggesting that the Clintons ever purchased, or sought to purchase, this lot.

164 Wade Interview, May 12, 1994, at 8; DKRT900061.

165 On March 21, 1995, Chris Wade pleaded guilty to two felonies, one of which involved the "parking" of an interest in lot 7. *Wall Street Journal*, Mar. 22, 1995, at B6. The transaction involved in the guilty plea occurred in 1991, some years after McDougal left Madison Guaranty and well after Madison Guaranty failed and entered a receivership. The person with whom Wade allegedly parked lot 7 (John Lauramoore) bought lot 13 from Mrs. Clinton in 1988. See Part IX.C.1 below.

166 DKRT800946. The closing statement identifies the payment to Citizens Bank as consisting of \$27,710 for the release of lot 7 and \$2,660 for the release of lot 13.

167 CBF0247.

168 DKRT900163.

d. The McDougals advance more money to Whitewater.

In this fiscal year, McDougal advanced more money to Whitewater. In a manner similar to the Pembroke Manor advance of September 1980 (used to pay for the prefab house), between September and December 1980, McDougal took approximately \$18,069 from other entities he controlled and deposited the money into the Whitewater account.¹⁶⁹ Of this amount, McDougal advanced \$7,000 personally, McDougal & Associates advanced \$4,000 and Great Southern Land advanced \$7,069. These advances tended to coincide with occasions on which Whitewater needed cash.

For example, on November 14, 1980, Whitewater made a quarterly interest payment to Citizens Bank in the amount of \$4,755.73.¹⁷⁰ One day later, on November 15, Jim McDougal deposited \$3,800 into the Whitewater account.¹⁷¹ Similarly, a personal advance from Jim McDougal on December 16, 1980 in the amount of \$2,000 appears to have funded a \$1,300 interest payment made to the Bank of Cherry Valley three days later.¹⁷² That money paid interest on the \$20,000 loan obtained by Jim McDougal to retire the Union Bank earnest money loan.

On the other hand, an advance of \$4,000 from the Great Southern Land Company on September 1, 1980 went into the Whitewater account only to be withdrawn the same day as part of a \$5,000 disbursement from Whitewater to Jim McDougal.¹⁷³ The purpose, if any, of using the Whitewater account for this funds transfer cannot be ascertained from the available documents.

The other \$8,269 advanced from McDougal-controlled entities to Whitewater¹⁷⁴ came in the form of eight other individual advances between June 1980 and May 1981. As the amount of these advances is relatively small, and

169 This amount excludes the \$32,000 Pembroke advance, the \$30,000 Madison Bank loan to Mrs. Clinton and the \$20,000 Bank of Cherry Valley loan to Jim McDougal, all described earlier.

170 DKRT800451; DKRT800677. The date of the check is hard to read and could be November 19. The check cleared on November 20, 1980.

171 DKRT901205. The deposit was posted on November 17, 1980. DKRT800451; DKRT900770.

172 DKRT900770; DKRT800316; DKRT901133; DKRT900771.

173 DKRT900981; DKRT800062; DKRT901104; DKRT901094.

174 This number is \$18,069 less the \$3,800 deposited November 15, 1980, the \$2,000 advanced December 16, 1980 and the \$4,000 advanced September 1, 1980, all of which were described immediately above. $\$18,069 - \$3,800 - \$2,000 - \$4,000 = \$8,269$.

as they precede McDougal's acquisition of Madison Guaranty, the source of these funds will not be detailed here.

4. Operations and cash flow in fiscal year 1981.

Through May 31, 1981 (the end of Whitewater's fiscal year), 19 of the 44 lots had been sold, including lot 7 to Wade. Thirteen of the sales occurred in fiscal 1981 (the other six had occurred between August 1979 and May 1980). Two of the sales were all cash (lot 7 to Wade and lot 42 to Anthony Cammarata¹⁷⁵). The other 11 were contract for deed installment sales in which Whitewater had taken notes. The total amount of cash received by Whitewater in this fiscal year from all prior lot sales amounted to \$54,815. Whitewater had positive cash flow before debt service of \$34,458.

Debt service payments totaled \$64,069: \$59,700 to Citizens Bank and Union Bank; and \$4,369 to the Bank of Cherry Valley. The \$59,700 consisted of \$14,380 of interest and \$45,320 of principal: \$30,370 from lot 7; \$5,950 from lot 42; and \$9,000 from the Clintons.¹⁷⁶ The \$4,369 paid to the Bank of Cherry Valley includes \$2,600 of interest and \$1,300 of principal¹⁷⁷ plus a principal payment of \$469 made April 13, 1981.¹⁷⁸

Combining operating expenses, sales commissions and debt service, Whitewater had a negative cash flow for the 1981 fiscal year of \$29,611. Combined with negative cash flow after debt service through May 31, 1980 of \$38,073, total negative cash flow after debt service from inception of the venture through May 31, 1981 amounted to \$67,684.

The McDougals and the Clintons covered this shortfall with personal funds paid directly to the Company, or to lenders. Through May 31, 1981, the Clintons had advanced \$35,970 and the McDougals had advanced \$56,991.

Since the project's start, the economic climate had deteriorated. The country was in a recession. Interest rates had increased substantially, driving

175 DKRT800232.

176 The Clintons' tax return for 1980 reported \$9,000 in interest expense paid to Jim McDougal (which matches the loan principal reduction of the Citizens Bank loan on August 23, 1980) and a \$4,350 interest payment to Citizens Bank of Flippin (which matches the Lyons Report for an interest payment on August 5, 1980). DKRT800108.

177 The Bank of Cherry Valley loan was the \$20,000 loan obtained personally by Jim McDougal. McDougal contributed the proceeds of this loan to Whitewater, which used the proceeds to retire the Union Bank earnest money loan.

178 DKRT801332. The available documents do not identify the source of this \$469. The same is true of another \$258 paid August 11, 1982. These are two of the 11 bank debt payments made by unidentified payors

up the interest rates on the Whitewater debt.¹⁷⁹ Also, the overthrow of the Shah of Iran and the Iranian revolution, in 1979, had driven up gasoline prices and decreased interest in vacation homes. Although 1981 had been a better year than 1979 or 1980, the prognosis for this project was not bright.

5. The bank debt as of August 1981 and the Madison Bank operating capital loan.

On August 5, 1981, the Citizens Bank loan was renewed and modified for the third consecutive year.¹⁸⁰ The renewal was followed by a \$15,902 payment to Citizens Bank on August 11, 1981. That payment consisted of \$8,050 in principal and \$7,852 in interest.¹⁸¹ As of August 11, 1981, the principal balance had been reduced by \$53,370,¹⁸² from the original balance of \$182,611 to \$129,241. But the interest rate had increased from 11 percent to 19 percent.¹⁸³ Therefore, total interest expense actually increased despite the substantial reduction in the principal balance of the loan.¹⁸⁴

For these reasons, Whitewater did not have the money needed to pay down the Citizens Bank mortgage. Therefore, Whitewater borrowed the money. On August 14, 1981, Madison Bank made a \$30,000 loan to Whitewater. The stated purpose of the loan, according to the Disclosure and Security Agreement, was "operating capital." The loan was scheduled to mature approximately 90 days later on November 13, 1981 and carried a stated annual interest rate of 21 percent. The agreement was executed by Jim McDougal as president of Whitewater Development Company; the Clintons did not sign this agreement.¹⁸⁵ This loan provided the cash needed to make the \$15,902 payment to Citizens Bank. It also provided much of the \$22,840 disbursed

179 These rate increases did not affect the lot buyers. Their notes had fixed rates. In any event, they were capped by the 10 percent usury law in effect in Arkansas until December 1982, discussed previously.

180 CBF0282.

181 DKRT800467; DKRT801227. In accordance with standard banking practice, Citizens Bank probably required the payment as a condition of extending the loan.

182 The principal reductions consisted of \$30,370 derived from the lot 7 sale to Wade on October 14, 1980, the Clintons' \$9,000 payment made in August 1980, \$5,950 received from the all-cash sale of lot 42 in March 1981 (DKRT800232) and a \$8,050 payment made by Whitewater on August 11, 1981.

183 CBFO275; CBFO282.

184 At 11 percent, \$182,611 would result in annual interest expense of \$20,087; \$129,241 at 19 percent would result in annual interest expense of \$24,556, an increase of \$4,469.

185 MBT00000078.

from September 1, 1981 through September 15, 1981 to Chris Wade, to Pembroke Manor and to Jim McDougal personally.¹⁸⁶

The operating capital was renewed for \$27,000 on November 12, 1981 for approximately 90 more days, and was scheduled to mature on February 11, 1982.¹⁸⁷ In connection with this renewal, Whitewater made a \$4,553.40 payment, \$3,000.00 to principal and \$1,553.40 to interest.¹⁸⁸

After obtaining the operating capital loan from Madison Bank, Whitewater had the following bank loans outstanding:¹⁸⁹

Bank Debt As Of August 1981

<u>Source</u>	<u>Outstanding Balance</u>
Citizens Bank mortgage	\$129,241
Bank of Cherry Valley loan obtained by Jim McDougal to retire the Union Bank earnest money loan ¹⁹⁰	16,931
Madison Bank prefab house loan	30,000
Madison Bank operating capital loan	<u>30,000</u>
 Total	 <u>\$206,172</u>

Thus, the bank debt totaled \$206,172, slightly more than the total amount of debt at the beginning of the venture (\$202,611).

186 Of this amount \$7,000 was disbursed to Pembroke on September 14, 1981, and \$10,000 was disbursed to Jim McDougal on September 15, 1981; Whitewater's general ledger reflects that both amounts were in repayment of loans. DKRT801369; DKRT801374; DKRT800213-14. The remaining \$5,840 was paid to Chris Wade on September 1, 1981 for three Arkansas Ventures contracts on unrelated real estate. DKRT801239; DKRT800213-214; DKRT100369; DKRT900223. This may be related to Arkansas Ventures' purchase of lot 40.

187 DKRT700395.

188 DKRT801376; MBT000000079.

189 This does not include any of the interest-free advances to Whitewater made by McDougal-controlled entities. These advances amounted to \$56,991 as of that date.

190 The proceeds of this loan were deposited into the Whitewater account on June 20, 1980. DKRT800313-14. Whitewater made two principal payments of \$1,300 each on this \$20,000 loan: one on May 8, 1981 and another on June 1, 1981. DKRT801225-26; DKRT801328. As previously noted, the loan balance was reduced by \$469 through April 1981. DKRT801332. The available documents do not identify the source of this \$469. The same is true of another \$258 paid August 11, 1982. These are two of the 11 bank debt payments made by unidentified payors.

6. Whitewater after three years.

August 1981 marked the project's third anniversary. Approximately 131 acres, or 57 percent of the original 230 acres, had been sold (20 of the 44 lots). The Company held \$134,842 of notes receivable as of May 31, 1981 (19 lots had been sold).¹⁹¹ One additional note receivable, for approximately \$9,500, was received for the lone lot sale made between May and August.¹⁹²

To retire the debt (setting aside for the moment interest expense), Whitewater needed to sell the remaining 99 acres, net of selling expenses, for at least \$61,830.¹⁹³ This 99 acres included lot 13, which was improved by the prefab house and had a value of approximately \$30,000. On a per acre basis, the remaining land needed to be sold for approximately \$625 an acre.

As noted, these calculations do not account for interest expense. The interest rates on the bank loans ranged from 17 percent to 21 percent. Under the usury laws, Whitewater could charge installment buyers only 10 percent interest.¹⁹⁴ Thus, the bank debt of \$206,172 required approximately \$39,734¹⁹⁵ in annual interest payments, while lot buyers' promissory notes with a face value of \$206,172 would yield only \$20,617 annually. Therefore, even if the remaining lots were sold for notes with a face value of \$61,830 (by no means a sure thing, but by no means impossible either), the McDougals and the Clintons faced an annual interest shortfall of \$19,117.¹⁹⁶

The lots did not sell. Most of the first 20 lots sold faced the White River and arguably were the most desirable lots. Many of the remaining lots were interior and less desirable.¹⁹⁷ Most of these lots were not sold until 1985, when they were sold in bulk to Chris Wade's Ozark Air.

191 DKRT800058.

192 DKRT900607.

193 Calculated as follows: \$61,830 = total debt of \$206,172 - (notes receivable of \$134,842 + \$9,500).

194 As noted, this changed in late 1982, when the usury laws were changed. Thereafter, Whitewater did occasionally charge more than 10 percent on installment sales. In all, starting in 1984, Whitewater obtained \$48,025 in notes at 12 percent and \$13,325 at 10.5 percent.

195 Calculated as follows: $(\$129,241 \times 19\%) + (\$16,931 \times 17\%) + (\$30,000 \times 20\%) + (\$30,000 \times 21\%)$.

196 This assumes that the remaining lots are sold for \$61,830 in notes. The negative spread would be even greater if the loan balances exceeded the balance of the installment notes receivable, which would occur if all the land were not sold.

197 See Chart 3 for a map depicting the location of the various lots, and which lots sold.

**V. 1982-1985: THE YEARS OF MINIMAL SALES AND
NEGATIVE CASH FLOWS.**

A. Developments in fiscal year 1982.

**1. The sale of lot 13 to Hilman Logan and the repayment
of Mrs. Clinton's Madison Bank loan.**

Whitewater lot 13, where Mrs. Clinton's prefab house sat, sold to Hilman Logan on December 14, 1981 for \$27,500, providing net cash to Whitewater of \$2,963 after deducting commissions and closing costs of \$3,037 and taking back a \$21,500 note receivable.¹⁹⁸ The prefab house alone had cost \$28,419, so the sale price did not cover the house, let alone the land.¹⁹⁹ The allocated cost basis of the land (\$968 per acre for the 3.05 acre parcel²⁰⁰) was \$2,952. In total, the land plus the house had cost \$31,371 on Whitewater's books. Thus, the sale resulted in a loss of \$6,908.²⁰¹

Compounding the loss, the interest that Whitewater received on Hilman Logan's promissory note was much less than the interest on the loan from Madison Bank that Mrs. Clinton had taken out to finance the construction of the house. The difference between the two (the "negative interest spread") was significant. Hilman Logan's \$21,500 note payable to Whitewater accrued interest at 10 percent, while Mrs. Clinton's loan accrued interest at 20 percent. The difference amounted to an annual loss of \$2,150. Logan's note, typical of many of the Whitewater lot sale notes, had a 10-year term with flat monthly payments of \$285.13. Unless prepaid, it would be payable into the 1990s.²⁰²

In contrast, Mrs. Clinton's loan had a one-year term and was due to mature on December 16, 1981--just two days after the sale to Logan. Since lot 13 had been sold on an installment contract, with only \$2,963 received at closing by Whitewater, the sale did not yield enough cash to retire the loan on schedule. Hence, the loan was not paid off on the maturity date. Instead, on January 8, 1982, Whitewater--not Mrs. Clinton--disbursed \$6,361.65 to Madison Bank to pay the interest that had accrued since the origination of the loan.²⁰³

198 DKRT801037; DKRT800759.

199 DKRT900922; DKRT900924; DKRT901119; DKRT901117; DKRT901115.

200 DKRT801097; DKRT900358.

201 Calculated as follows: \$31,371 in cost basis less the net sales price of \$24,463 (\$27,500 less \$3,037).

202 DKRT800748; DKRT900163.

203 SN000000156.

Subpoenas were served on Madison Bank but no documents were obtained that evidenced a formal extension or modification of this loan. Nevertheless, circumstantial evidence indicates its subsequent history. It appears that the loan was extended from December 16, 1981 to June 1, 1982. White-water paid \$2,662.62 to Madison Bank on March 24, 1982. Of this, \$2,000 was applied against the outstanding principal balance.²⁰⁴ The loan then went into default. On August 5, 1982, Theresa Pockrus of Madison Bank wrote a letter to Mrs. Clinton stating:

Your note and mortgage with Madison Bank & Trust in the amount of \$28,000 matured on June 1, 1982. We have been receiving payments in the amount of \$285.13 per month which has been applied to accrued interest. However, interest is accruing at \$373.33 every 30 days and the \$285.13 payments received each month are not satisfying the interest that is accruing. . . . [t]he note is currently reflecting as past due as defined by federal and state authorities. A satisfactory agreement needs to be worked out between yourself, Mr. Logan, and the bank²⁰⁵

Mrs. Clinton responded on August 11, 1982:

. . . I ask that you speak with either Mr. or Mrs. McDougal who have made all arrangements for this loan. It has been my understanding that the loan has been paid out of proceeds from sales by the White Water Development Corporation.²⁰⁶

Mrs. Clinton had, however, taken title to the land personally and, according to the documents, had taken out the loan personally. This loan was retired in October 1983, when it was paid off primarily using money that Governor Clinton borrowed from Security Bank of Paragould.

204 DKRT700318; DKRT200754; DKRT700692.

205 DKRT700318. The \$285.13 came from Hilman Logan. A monthly accrual of \$373.33 on \$28,000 represents an annual rate of interest of 16 percent, which is less than the original rate of 20 percent. No documentation of this modification has been found.

206 DKRT400134. Two payments on this loan were made by unidentified payors: \$699 in September 1982 and \$1,730 on March 29, 1983. These are two of the 11 bank debt payments made by unidentified payors.

2. The McDougals' purchase of Madison Guaranty Savings and Loan Association.

a. Financing the purchase.

Witnesses advise that McDougal became disenchanted with the operation of Madison Bank because it did not provide a vehicle to invest in real estate. Changes in the law in the early 1980s meant, however, that a savings and loan could be used for that purpose. McDougal later described the savings and loan to Don Denton as "a candy store."²⁰⁷

In January 1982, the McDougals, together with Steve Smith and his wife and C. E. Ransom, purchased 90 percent of Woodruff County Savings and Loan Association, which they later renamed Madison Guaranty Savings & Loan, for \$246,500.²⁰⁸ Woodruff County is just across the White River from Bradford, where Jim McDougal was born. (This institution shall be referred to as "Madison Guaranty" throughout.)

The change in control application indicates that the McDougals planned to finance their stock purchase using "[f]unds received from closely held corporations."²⁰⁹ Actually, the McDougals financed at least part of the purchase by borrowing \$70,000 from Worthen Bank.²¹⁰ The loan was written for a 90 day term to mature April 26, 1982, bearing interest at the prime rate. The loan was extended many times over the course of the next several years, with periodic principal payments.²¹¹

A year and a half later, in June 1983, the McDougals applied for permission to buy some of the stock held by the Smiths and Ransom.²¹² On June 21, 1983, McDougal borrowed an additional \$142,186.09 from Worthen Bank to finance this purchase. The note was payable on demand, no later than

207 Denton Interview, Apr. 28, 1994, at 14. Denton had been the loan officer at Union Bank responsible for several of Union Bank's loans to McDougal, including the earnest money loan. Denton later served as chief lending officer at Madison Guaranty. *Id.* at 1. He now works for the Little Rock Airport Commission.

208 PMS0352; PMS0343; RTCKC8617; OTS doc. 048730-31. The McDougals purchased approximately 30 percent of the stock for \$82,000. OTS doc. 048730-31.

209 OTS doc. 048752, 048768.

210 WRTC00377, 00350, 00008.

211 WRTC00373-77, 00350, 00332, 00302-03, 00008.

212 OTS doc. 027016.

one year, and bore interest at the prime rate plus one percent.²¹³ The note was extended several times afterwards with periodic principal reductions.²¹⁴ Although the financing was in place by June, approval of the purchase did not come until October 1983 and the purchase closed in November.²¹⁵ The purchase gave the McDougals a controlling interest, somewhere over 65 percent.²¹⁶

Therefore, between October 1980 and January 1982, McDougal either acquired control of or obtained a substantial interest in two financial institutions. By June 1983, the McDougals had taken on \$548,186 of personal debt to finance these acquisitions.²¹⁷ Madison Bank and Madison Guaranty did not earn enough to service that debt, which increasingly came to burden the McDougals. The McDougals required large transfers of money to service this debt. The deterioration of Whitewater's financial situation as lot sales dried up added to the McDougals' cash flow problems. As will be seen, these problems came to a head between 1984 and 1986.

b. Madison Guaranty's change in direction.

At the end of 1984, the McDougal-led Madison Guaranty management team described the situation it had faced at acquisition:

At the time of the assumption of control by present management in January 1982, the association was experiencing losses at a level that would have exhausted its net worth in four months To achieve profitability . . . the association was constrained to rely heavily on earnings from its service corporation.²¹⁸

The earliest available financial data for Madison Guaranty dates from December 31, 1982. On that date, Madison Guaranty had total assets of \$6.7 million.²¹⁹ One year later, on December 31, 1983, it had total assets of \$17.0

213 WRTC00370.

214 WRTC00366-69, 00348, 00002, 00315, 00010.

215 OTS doc. 027007-11.

216 The documents are inconsistent as to the actual percentage. See OTS doc. 027007 (68.63%), 027016 (84%); PMS0323-37 (64.5%).

217 The outstanding debt consisted of approximately \$31,000 from Worthen Bank (originally \$70,000) (WRTC00376, WRTC00377), \$375,000 from Union National Bank (WRTC00125, 00123, 00120) and \$142,186 from Worthen Bank (WRTC00370).

218 PMS0352.

219 PMS0339.

million.²²⁰ To achieve this marked asset growth, Madison Guaranty relied heavily on costly brokered deposits.²²¹ Indeed, Madison Guaranty's interest spread for the year ended December 31, 1983 was only \$98,000.²²² The 1984 examination response indicates that "the acceptance of brokered deposits was discontinued in December [1983] when it became apparent to the institution that acceptance of such deposits was opposed by regulators."²²³

As management stated, much of the new money went to Madison Guaranty's new service corporation. In early 1982, Madison Guaranty formed Madison Financial Corporation, principally to invest in real estate.²²⁴ Madison Financial participated in local land development projects in Arkansas, and in places as distant as the Campobello project in New Brunswick, Canada.

Under previous management, Madison Guaranty had had two offices in Woodruff County (in McCrory and Augusta) and one office just across the White River in Bradford. McDougal planned to expand, so in 1984 he moved the *de facto* headquarters to Little Rock and opened up an office in the Quapaw Quarter south of downtown and just the other side of Interstate 630.²²⁵ From here he directed the institution's move into real estate development.

c. McDougal as a banker.

From time to time, Jim McDougal has denied that he played much of a role in running Madison Guaranty, but he does not take a similar line when it comes to Madison Financial. At his criminal trial, he testified about the management of Madison Guaranty as follows:²²⁶

220 PMS0339. For McDougal, even this rapid growth was insufficient. McDougal later told Bob Keller, who worked for Madison Guaranty as a vice president from August 1983 to July 1984, that he, McDougal, believed that Madison Guaranty would have to grow to \$55 million in deposits to cover its costs. Keller Interview, Apr. 25, 1994, tape 1, at 1 and tape 2, at 4-5. Ultimately, Madison Guaranty's deposits grew to approximately \$100 million. PMS0492.

221 The earliest available data, December 31, 1983, indicates that the ratio of brokered deposits to total deposits was 44.6%. PMS0326.

222 "Interest spread" is defined as the difference between "interest income" and "cost of money." See PMS0340.

223 PMS0346.

224 RTCKC8618.

225 The Quapaw Quarter is Little Rock's oldest sector. It is a transitional neighborhood, close to the Governor's Mansion and some of Little Rock's finest old mansions, but also close to some of Little Rock's worst housing. Trantham Interview, tape 2, at 14.

226 See footnote 22 above for background on this trial.

- Q. Okay. What did you do, as far as the operation of the savings and loan is concerned, as far as the debits and credits and the just general overall operation?
- A. I stayed as far from it as I could. I'm not a paperman. I don't know how to do those things. Mr. Denton testified I wouldn't know how to fill a note out.
- Q. Now, Mr. McDougal, you owned how much of a percentage of this organization at this time?
- A. With my wife and I the family percent was about 84 percent I think.
- Q. Were you the boss?
- A. Well, down at that grocery store when daddy walked in he is the boss. You know, he owned it.
- Q. Okay. So you don't deny -- I mean --
- A. When they saw me coming they didn't throw something down in the hall or park up in the first parking space. They knew I wouldn't like it.
- Q. Okay. All right. Would you make demands on your people to do things exactly like you wanted?
- A. Well, since I didn't understand what they were doing, I was incapable of telling them what to do.²²⁷

In contrast to his testimony about Madison Guaranty, McDougal agreed he actively managed Madison Financial:

- Q. And when you stepped down or took your hat off as chairman of the board of Madison Guaranty, you moved over to Madison Financial and ran Madison Financial?
- A. That's correct.
- Q. Took an active part in Madison Financial?

227 McDougal R.T. 915-16.

A. Yes, sir.²²⁸

A November 1985 memorandum from McDougal to all employees illuminates what he means by "active role." In this memorandum he provides the following directives (among many others):

All advertising must be cleared through me before it is placed. . . .

Thirdly, expenses are increasing because we are buying items for your use on various projects when we may, in fact, already have the needed item in inventory. No expenditure for furniture, fixtures, signs, supplies, etc. in excess of \$300 is to be made without either my or Vernon's [Vernon Dutton, McDougal's assistant] approving it.

Additionally, I have noticed that from time to time, specific instructions I have given have been disregarded because some "expert" either within or outside the company has another idea. For example, if I say I want 10 tons of rye grass placed in a certain area on one of our developments, I would not want to go back and discover that someone has superceded [sic] my judgment and used Kentucky bluegrass.²²⁹

In his criminal trial, McDougal portrayed himself as a disengaged, hands-off person who knew little about banking and left it to people who did.²³⁰ This account cannot be reconciled with the statements of any of the many people we have interviewed. Some portrayed him as a very hands-on manager through whom everything flowed. Others portrayed him as erratic, occasionally engaged (especially at the outset of a real estate project), but often disengaged, or at least off to the next deal.²³¹

3. The Clintons' loan from Citizens Bank of Jonesboro.

Documents exist that suggest the Clintons borrowed money from Citizens Bank of Jonesboro (not to be confused with Citizens Bank of Flippin, discussed above). But the documents do not indicate whether this loan had

228 McDougal R.T. 946.

229 RTCKC37880.

230 McDougal R.T. 915-16.

231 E.g., Pat Harris Deposition, Feb. 17, 1995, at 117:17-119:24.

anything to do with Whitewater.²³² There is evidence of two payments to Citizens Bank of Jonesboro. One was made personally by the Clintons. The other came from Whitewater funds. The Clinton payment, drawn on a Worthen Bank account on February 17, 1981, was for \$243.82. The check, signed by Mr. Clinton and made payable to "Citizens Bank," contained the notation "interest on Note #585-270."²³³ The Whitewater disbursement, on February 22, 1982, was for \$5,691.20; it also referenced loan #585-270.²³⁴

In the Clintons' personal financial statements dated May 21, 1981, a \$5,000 note payable to Citizens Bank of Jonesboro is included in the schedule of liabilities under the heading "general debt."²³⁵ In a letter from Jim McDougal to Mr. Clinton dated March 1, 1982, however, McDougal describes the Whitewater disbursement of \$5,691.20 as follows:

I have paid from Whitewater Development Corporation the note you owed Citizens Bank of Jonesboro. You are correct in your belief that the sum of money borrowed was a part of your investment in Whitewater.²³⁶

It has not been possible to prove or disprove this statement.²³⁷ It would not have been unusual, however, for the Clintons to have incurred additional debt for the benefit of Whitewater. Indeed, only once did the Clintons make a payment directly to Whitewater out of personal funds that they had on hand. (This was the \$2,900 paid in December 1979.) On all other occasions in which the Clintons advanced money for the benefit of the venture, they did so either by borrowing money and depositing that money into Whitewater (i.e., the prefab house loans), or by using personal funds to service debt (i.e., by paying money directly, or through a third party, to a bank).²³⁸

232 Flippin is a town near Whitewater. Jonesboro is a city in the northeastern part of Arkansas.

233 DKRT801314.

234 DKRT500067.

235 CBF0280.

236 DKRT400989.

237 The documents we subpoenaed from various sources, including Citizens Bank of Jonesboro, are inconclusive.

238 The Clintons still carried the \$5,000 Jonesboro debt in their personal financial statements dated April 25, 1983. SBP0065-66. The Lyons Report does not address these payments.

4. Operations and cash flow in fiscal year 1982.

In fiscal 1982, Whitewater sold six new lots.²³⁹ By the end of the fiscal year, 25 of the 44 lots had been sold. In the next three years between May 1982 and May 1985, only two more lots were sold. In May 1985, Chris Wade's Ozark Air purchased the remaining 24 lots in a bulk transaction.

While new sales in fiscal year 1982 were scarce, the total cash flow received from lot sale down payments and from payments received on existing notes receivable (both principal and interest) was \$36,241. After deducting \$5,992 for commissions and other operating expenses, \$30,249 was available for servicing bank loans. Total payments made to banks during the fiscal year amounted to \$37,978, consisting of \$23,628 of interest and \$14,350 in principal. After deducting this amount from cash flow contributed from operations, Whitewater had negative cash flow of \$7,729 for fiscal year 1982.

These numbers represent the amounts actually paid to banks, rather than the amounts accrued. Between August 5, 1981 (when the Citizens Bank mortgage loan was renewed) and May 31, 1982, Whitewater made no payments to Citizens Bank of principal or interest.²⁴⁰ During this period, approximately \$20,000 of interest accrued.²⁴¹ Because they did not have to pay Citizens Bank on a monthly basis, the Whitewater venturers temporarily did not need to locate additional outside sources of cash.²⁴²

5. Transactions with other McDougal-controlled entities.

In fiscal 1982, there were three transactions between Whitewater and other McDougal-controlled entities. All three fit the pattern established earlier of using deposits from entities under McDougal's control to cure or avoid overdrafts of the Whitewater account.

On January 8, 1982, Great Southern Land deposited \$1,450 into the Whitewater checking account at Madison Bank. But for this deposit, White-

239 One lot 40, originally sold in September 1979, was repossessed and resold, for cash, to Arkansas Ventures, a company connected to Chris Wade, on August 26, 1981. DKRT900258, 900403, 900189, 800381. That was the first repossession of a Whitewater lot on record.

240 CBF0282, CBF0436.

241 This calculation assumes approximately 10 months of accrued interest on the \$129,241 outstanding balance at 19 percent per annum. CBF0282.

242 Citizens Bank did not require monthly payments of interest until November 1982. CBF0322, CBF0282.

water's \$6,361.65 interest payment on the same day to Madison Bank would have overdrawn the account.²⁴³

On February 22, 1982, Rolling Manor deposited \$766.85 into the Whitewater account.²⁴⁴ These funds assisted in preventing an overdraft that otherwise would have resulted from the \$5,691.20 payment to Citizens Bank of Jonesboro on February 26, described above. The balance in the Whitewater checking account after the Jonesboro payment was \$61.69.²⁴⁵

Finally, on March 25, 1982, \$334.77 from Great Southern Land was deposited into the Whitewater account. These funds were needed to prevent an overdraft from a \$2,662.62 loan payment made to Madison Bank that same day. At the close of business on March 25, 1982, the balance in the Whitewater checking account was \$.08.²⁴⁶

6. The Clintons' advances to date.

The Clintons made no new net advances to Whitewater in fiscal 1982. Therefore, through May 31, 1982, the Clintons' total advances to Whitewater remained at \$35,970 (gross and net). This number had not changed since August 23, 1980, when the Clintons had funded a \$9,000 principal payment to Citizens Bank.²⁴⁷ For the previous 21 months, McDougal had not requested any cash, nor had the Clintons been asked to fund any Whitewater loan payments.²⁴⁸ The Whitewater venture had not required significant infusions of cash, primarily because no principal or interest was paid on the Citizens Bank mortgage between August 1981 and November 1982.²⁴⁹

243 DKRT500069; DKRT800217; DKRT500582; DKRT200752.

244 DKRT500638.

245 DKRT500065, DKRT500067.

246 DKRT500061; DKRT100545; DKRT200754.

247 The Lyons Report reached a different conclusion. It considered a Clinton payment of \$20,744.65 to Madison Bank on February 2, 1982 to be a Whitewater-related disbursement. DKRT800134A. However, the Clintons indicated in 1994 that this payment did not relate to Whitewater but to a loan involving President Clinton's mother, Virginia Kelley. The Lyons Report also credited the Clintons with other loan payments totaling \$1,500, which the Clintons have since stated were unrelated to their Whitewater investment. *Washington Post*, Mar. 25, 1994, at A1.

248 In their April 25, 1983 financial statement, the Clintons reported a net worth of \$309,300, consisting of \$505,000 in assets less \$195,700 of liabilities. The \$505,000 in assets includes \$200,000 representing the Clintons' investment in Whitewater. SBP0065-66.

249 CBF0436.

B. Developments in fiscal year 1983.

1. Repayment of the Madison Bank operating capital loan.

As discussed previously, the \$30,000 operating capital loan obtained by Whitewater from Madison Bank in August 1981 was eventually renewed to mature on February 11, 1982. Whitewater did not retire the loan on that date. The documentary evidence does not reveal whether this loan was ever extended again. It is known that on June 1, 1982, Whitewater disbursed \$3,960.05 to Madison Bank, \$1,444.98 for principal and \$2,515.07 for interest.²⁵⁰ This was the last disbursement from the Whitewater account made to service this loan.

A Madison Bank loan payment history reflects retirement of the loan on November 18, 1982 with a \$27,600.00 payment from an unstated source.²⁵¹ Yet Whitewater's general ledger carried this debt on the books in the amount of \$25,855 at the start of fiscal year 1985.²⁵² Apparently Charles James (Whitewater's accountant) did not know that the loan had been paid off earlier. When James prepared the 1985 fiscal year-end records, he effectively wrote off this debt by offsetting it against a loan receivable then due from Jim McDougal for money that McDougal had borrowed from Whitewater. The notation accompanying this entry in the records reads: "Note was paid off by JBM [Jim McDougal's initials] personally." This accounting entry was made approximately two and one-half years after the loan had been repaid in full.²⁵³

The documentary evidence does not reflect where Jim McDougal obtained the funds to retire that debt. No evidence that these funds originated from Madison Guaranty has been found.²⁵⁴ Regardless of the source of the

250 DKRT700396; DKRT500049.

251 DKRT700396. This is by far the largest of the 11 bank debt payments made by unidentified payors. The next largest was a \$5,979 payment made October 14, 1983 on Mrs. Clinton's Madison Bank prefab house loan.

252 DKRT100350.

253 DKRT600081.

254 Attempts have been made to reconstruct the McDougals' borrowing relationships with Madison Guaranty, Madison Bank, Worthen Bank and Union Bank to the extent information is available. This has yielded a rough accounting of major Madison Guaranty lending activity, including loan repayments, consolidations and new loans, which reconcile the RTC's Proof of Loss claim in McDougal's bankruptcy filed in January 1992. No evidence has been found that the McDougals borrowed money directly from Madison Guaranty or other McDougal-controlled real estate entities in this period.

(continued...)

funds, the retirement of the Madison Bank loan substantially reduced Whitewater's negative cash flow. The retirement of this loan indirectly benefited the shareholders by reducing the Company's aggregate debt.²⁵⁵

2. Renewal of the Citizens Bank mortgage loan and origination of the Citizens Bank interest funding loan.

The retirement of the Madison Bank loan was not the only significant banking development for Whitewater in November 1982. The same month, the Citizens Bank mortgage loan was extended.

The Citizens Bank mortgage loan, last extended in August 1981, was due to mature on August 5, 1982.²⁵⁶ For reasons unknown, the loan was not again extended until approximately three months later, on November 1, 1982.²⁵⁷ From August 5, 1981 through November 1, 1982, a period of almost 15 months, no payments of either principal or interest had been made on the loan. As of November 1, 1982, interest accrued and due amounted to \$30,476.16. On November 30, 1982, the Citizens Bank loan was credited with an interest payment in that amount.²⁵⁸

Citizens Bank loaned the McDougals and the Clintons the money they needed to pay this accrued interest to Citizens Bank.²⁵⁹ The money to pay the interest could not have come from Whitewater; Whitewater's checking

254(...continued)

One possible source of this \$27,600 is Madison Bank. In 1986, a loan to Susan McDougal, which then had a principal balance of \$33,289, was classified "substandard" by the FDIC. FDIC00074; FDIC00105. The FDIC Report of Examination indicates that Susan McDougal originally borrowed \$40,000 for operating capital on May 18, 1982 and had extended the loan five times; it was then due in September 1986. *Id.* This loan has not been linked to the retirement of the operating capital loan, but it is possible that the funds were used for this purpose. (The operating capital loan matured in February; Susan McDougal's new operating capital loan was dated in May.) The documents do not reveal the ultimate disposition of Susan McDougal's loan.

255 However, the payment did not reduce the Clintons' personal exposure; the Madison Bank loan was the sole obligation of Whitewater and not its shareholders individually. MBT000000078.

256 CBF0282.

257 CBF0322.

258 CBF0436. The interest accrued through November 1, 1982 is shown on the Citizens Bank loan history ledger as interest *paid* on November 30, 1982. A recalculation of interest due indicates that this amount was interest *due through* November 1, 1982.

259 CBF0436; CBF0457; DKRT101117; CBF0221.

account had no funds on November 29, 1982.²⁶⁰ Whitewater's only other bank account at the time, the recently established escrow account at Citizens Bank, had a balance of only \$10,003.39 on November 30, 1982.²⁶¹ A withdrawal in the amount of \$10,476.16 was made from the escrow account on December 1, 1982, creating an overdraft of \$472.77.²⁶² Thus, after exhausting all corporate cash, Whitewater still needed \$20,000 to pay interest current on the Citizens mortgage.²⁶³ The shortfall was provided by a new Citizens Bank loan to the McDougals and Clintons (the "Interest Funding Loan").

On November 1, 1982, Citizens Bank loaned \$20,000 to the Clintons and McDougals dba Whitewater Development Company. All four individuals signed personally; the Interest Funding Loan was recourse to each. This loan (#10295) was scheduled to mature on April 30, 1983, six months after origination. Interest was to be paid at 14.5 percent per annum. This was a balloon loan; all interest and principal were payable at maturity. Security for the loan, as stated in the promissory note, was an assignment of escrow funds.²⁶⁴ The loan was disbursed to Whitewater on November 30, 1982, but was never deposited into any of Whitewater's accounts. The back of the check does not reflect any endorsement.²⁶⁵

260 DKRT500848.

261 DKRT600734, 600751. In a document entitled "Excerpts From the Minutes of the Meeting of the Board of Directors of Whitewater Development Company, Inc." dated October 30, 1982, the assignment of Whitewater escrow contracts to Citizens Bank is discussed:

... resolved that those escrow contracts for the sale of lands which are encumbered to Citizens Bank & Trust Company be assigned to Citizens Bank & Trust Company and the income from such contracts be deposited in an account at Citizens Bank & Trust Company; that the amounts collected in said account be applied to the interest and principal of the obligations of the corporation to Citizens Bank & Trust Company

CBF0312. It appears that Citizens Bank required the Company to assign the escrow contract cash flow to the Bank as a condition for the extension of the loan. CBF0221. This would make sense given the lack of any payments by Whitewater for more than a year. The Citizens Bank escrow account appears to have been opened in September 1982 with a \$8,325.05 deposit on September 10, 1982. The source of this deposit was a note payoff related to lot 36 in the amount of \$8,327.05. The \$2 difference likely relates to a bank service charge. DKRT500001; DKRT500530; MBT000000093.

262 DKRT600751.

263 Standard banking practice usually requires the current payment of interest as a precondition to extending or modifying a loan.

264 CBF0221.

265 CBF0224; DKRT600734; DKRT600751; DKRT500848; DKRT500870.

As noted, the Interest Funding Loan had a term of just six months. The documentary evidence does not show how the borrowers planned to pay back this loan in six months, given the low level of lot sales (six in fiscal year 1982, none in fiscal year 1983).

In fact, the loan was not paid off as originally scheduled on April 30, 1983.²⁶⁶ While records were subpoenaed from Citizens Bank, no evidence of any extension has been produced. A total of five payments were made on the loan. Three relatively small payments were made outside Whitewater.²⁶⁷ The fourth, an interest payment of \$1,117.35 on May 4, 1983, was disbursed from a Whitewater account.²⁶⁸

The final payment of principal and interest of \$20,260.55 on October 19, 1983 also was disbursed from a Whitewater account.²⁶⁹ On October 19, 1983, apparently to fund the loan repayment, Whitewater received \$18,584.28 from McDougal.²⁷⁰ Analysis of McDougal's borrowing activities, to the extent such information was available, does not reveal the source of these funds.²⁷¹ The deposit left a balance of \$.47 in the account after the loan payment.²⁷²

3. Problems at Madison Bank.

McDougal and others had acquired control of Madison Bank in October 1980.²⁷³ In the first year thereafter, Madison Bank's assets grew from \$1.6

266 CBF0230.

267 A Citizens Bank loan history reflects \$299.00 payments on December 21, 1982 and February 23, 1983, and a \$734.74 payment on July 20, 1983. CBF0230. The loan history does not identify the source of these funds. These are three of the 11 bank debt payments made by unidentified payors.

268 DKRT600643; CBF0230.

269 DKRT700410; CBF0230.

270 The deposit was comprised of two items: "#279" for \$17,000.00, and "#000108" for \$1,584.28. DKRT400931. It was verified that check #279 could not have originated from the McDougals' joint account (#424), as that check number was used in April 1984. IC00441. The other check number does not fit the check numbering sequence of their account. Evidence that this deposit was McDougal-related is provided by Whitewater's books. The entire \$18,584.28 was recorded by Charles James as a loan from Jim McDougal. DKRT100358.

271 Bank statements earlier than 1984 are not available. Some Madison Guaranty checks and deposit items earlier than 1984 are available on microfilm. The roll covering the relevant transaction in 1983 is missing.

272 DKRT500973.

273 VCH000385.

million to \$6.7 million. As of September 8, 1982, total assets were \$7.7 million.²⁷⁴ By August 1984, however, Madison Bank's assets had declined to \$5.5 million.²⁷⁵ Of the \$1.6 million in assets at October 20, 1980, only \$180,311 were loan receivables; the remainder was comprised of cash and securities. One year later the loan portfolio had grown to \$4.4 million.²⁷⁶ Three years later, in August 1984, the loan portfolio had shrunk to \$2.84 million.²⁷⁷

Madison Bank reported a net loss of \$11,000 for the year ended December 31, 1981. In 1982, with a thinner interest margin as a result of the cost of its brokered deposits and nonperforming loans, Madison Bank reported a net loss of \$100,000.²⁷⁸ This loss may have reduced Madison Bank's regulatory capital close to the six percent minimum requirement.²⁷⁹ As of September 8, 1982, adjusted capital was down to \$394,000, or 5.3 percent of adjusted gross assets, but after adjustment for classified assets, Madison Bank had deficit capital of \$68,000.²⁸⁰

The Federal Deposit Insurance Corporation began an examination of Madison Bank on September 8, 1982. The examination led on January 5, 1983 to a notice of charges and then to an order to cease and desist (C&D), to which the bank's board of directors consented on April 7, 1983.²⁸¹

The notice of charges accused Madison Bank of unsafe or unsound practices, including excessive poor-quality assets, excessive lending outside of Madison Bank's "trade area," improper transactions with affiliates, inadequate loan loss reserves and insufficient capital.²⁸² Examples provided included

274 VCH000387.

275 FDIC00018.

276 In this period, the legal lending limit to one borrower for a bank was 15 percent of adjusted capital, which in the case of Madison Bank, would have amounted to approximately \$80,000 based on its \$538,238 capital as of October 20, 1981. WRTC0118.

277 FDIC00018.

278 FDIC00020. The bank lost another \$109,000 in 1983. *Id.*

279 \$538,237 of capital as of October 1981 less \$100,000 would equal \$438,237. This capital to assets (\$6.7 million) ratio would be 6.54 percent.

280 VCH000387.

281 VCH000410-12; FDIC00075; VCH000367-73; the Order to Cease and Desist is RTCKC10163-70.

282 VCH0003367-73.

loans to Flowerwood Farms, Great Southern Land, Kings River Land, Madison Guaranty, Madison Properties, Park Place and Whitewater.²⁸³

Initially, the FDIC had given consideration to removing all lending authority from Jim McDougal and Steve Smith (the bank's controlling shareholders), but an addendum added in Washington, D.C. said:

... the provision in the ORDER restricting out-of-territory loans and requiring adherence to the bank's generally acceptable, written loan policies should adequately curtail the liberal lending activities of the two controlling shareholders.²⁸⁴

As thus modified, the C&D ordered Madison Bank not to extend credit outside of Madison Bank's trade area (except in specified circumstances), not to extend credit to borrowers who had uncollected classified loans with Madison Bank and not to lend any single borrower an amount in excess of 25 percent of Madison Bank's total equity capital. The C&D also ordered Madison Bank to increase its total capital by \$200,000, to write-off certain classified assets and to improve its accounting and underwriting practices.²⁸⁵

The C&D substantially diminished the role of Madison Bank in financing Jim McDougal's other activities, including Whitewater. The C&D also left him with \$375,000 of personal debt, incurred to buy Madison Bank, but without any prospect of dividend income from Madison Bank with which to pay back that debt. As a result, McDougal refocused his attention to Madison Guaranty. Similarly, Mrs. Clinton refinanced her prefab house loan elsewhere. The C&D did not explicitly bar Madison Bank from extending Mrs. Clinton's loan, but this was effectively the result of the C&D's provision that restricted Madison Bank's lending to a geographic trade area that did not include Whitewater.²⁸⁶

4. Operations and cash flow in fiscal year 1983.

Whitewater sold no lots in fiscal year 1983. Whitewater realized positive cash flow *before* debt service of \$28,966 in fiscal year 1983. Despite the lack of lot sales, cash flow from operations was positive. As a result of required bank payments, however, Whitewater realized negative cash flow *after* debt service of \$50,859 in fiscal year 1983.

283 VCH000371.

284 VCH000385-86.

285 RTCKC10163-69.

286 The Order defined Madison Bank's trade area as all of Madison County and the western half of Newton County. RTCKC10164. Whitewater is in Marion County.

The negative cash flow in fiscal year 1983 was covered by (a) the \$20,000 Interest Funding Loan and (b) loan payments of \$30,885 made on Whitewater-related loans for which the records do not identify the payors.²⁸⁷

C. Developments in fiscal year 1984.

1. The refinancing of Mrs. Clinton's Madison Bank loan using money that Governor Clinton borrowed from Security Bank of Paragould.

On September 30, 1983, Governor Clinton borrowed \$20,800 from Security Bank of Paragould, Arkansas.²⁸⁸ Marlin Jackson, the former president of Security Bank of Paragould, was then serving as State Banking Department Commissioner.²⁸⁹ The note (#957-585) was a demand note due no later than September 30, 1984, bearing interest at 13.5 percent.²⁹⁰ The proceeds of the note were paid directly to Madison Bank.²⁹¹ The loan payment history reflects that the proceeds reduced the balance of Mrs. Clinton's prefab house loan to \$6,051.94 but were insufficient to retire fully Mrs. Clinton's prefab house loan at Madison Bank.²⁹² Two subsequent entries were posted to the loan payment history, one dated October 13, 1983 and the other undated.

287 See observation 4 at page 4 above.

288 DKRT400155.

289 *Arkansas Democrat Gazette*, May 2, 1994, at 1A. In this article, Jackson is quoted as informing Clinton in 1983 that Jim McDougal's out-of-territory loans at Madison Bank "might run afoul of state law." "Experienced bankers know, and regulators know, that if you continue (making out-of-territory loans), it can become a serious safety and soundness issue."

The article notes that the new loan to Governor Clinton was an out-of-territory loan for Security Bank. Jackson claims he did not realize that "the Paragould bank had taken over [Mrs. Clinton's] loan "until eight or nine years later." He said the Clintons' connection to Security Bank was through its chairman at the time, Frank Oldham, whom they knew from the period in the 1970s when all three lived at Fayetteville." *Id.*

Despite this claim, the evidence indicates that Marlin Jackson knew at the time of the Security Bank loan. For example, on November 1, 1985, he wrote a letter (on State Bank Department letterhead) to Security Bank Vice President Charles Campbell, in which he stated: "I am enclosing the Extension Agreement which Governor Bill Clinton signed yesterday . . . it is my understanding that Jim McDougal, a close friend as well as business associate of Governor Clinton, is to forward you a check for \$2,322.42 representing the interest due on the note . . . I trust this meets with your approval and that it will soon remove the note from the past due list." DKRT200774.

290 DKRT400155.

291 DKRT200758.

292 MBT000000020.

These entries completed the repayment of the loan.²⁹³ No documentation to support the undated entry (\$5,796.87) has come to light, and the payor remains unidentified.²⁹⁴ The reconstruction of Whitewater's books suggests that the venture could not have been the source of this payment. Why Governor Clinton borrowed less than the full amount of Mrs. Clinton's outstanding loan also is unknown.

Governor Clinton completed a Security Bank of Paragould loan application dated September 30, 1983. He described the purpose of the loan as "business expenses."²⁹⁵ The Clintons provided a personal financial statement dated April 25, 1983 and addressed to the Bank of Cherry Valley. It listed assets of \$505,000 and net worth of \$310,000. Their assets included \$360,000 in real estate: houses worth \$160,000 and their half interest in Whitewater, which they valued at \$200,000. Their liabilities totaled \$195,000, including \$106,000 in secured notes payable to banks. The supporting detail, however, covers only \$12,500 of such liabilities. Mrs. Clinton's Madison Bank loan is not separately listed.²⁹⁶

Hilman Logan's monthly payments for lot 13 should have covered the interest due on the Security Bank loan.²⁹⁷ It is less clear how the Clintons intended to pay off the principal balance.

The Security Bank loan was extended and modified on several occasions.²⁹⁸ As of May 31, 1984, the principal balance was still \$20,800.²⁹⁹

2. Renewal of the Citizens Bank mortgage loan.

On October 14, 1983, the McDougals and Clintons executed an extension and modification agreement for the Citizens Bank loan. The principal

293 *Id.* The October 13, 1983 entry was a \$285.13 payment received from Hilman Logan. DKRT700692.

294 As noted, this is the second-largest of the bank debt payments made by unidentified payors. On March 29, 1983, an unidentified payor had paid another \$1,730 on this loan.

295 SBF0081.

296 The statement describes Whitewater: "1/2 int. Marion Cty., AR" consisting of 200 acres. SBP0065-66. The method of valuation is unclear. The value is roughly twice the price paid for the unimproved land, even though few lots had sold in recent years.

297 Logan paid \$285.13 a month, or \$3,409.56 for a year. DKRT200841. The interest due, all at maturity, on the Security Bank loan was \$2,808. DKRT400155.

298 SPB0075; DKRT100015; DKRT400115.

299 DKRT700557. The repayment of this loan is discussed in Parts VI.C and VII.B.9 below.

balance of the loan had decreased just \$1,166 (to \$128,075.44) since November 1982, when the loan was last renewed and when the McDougals and the Clintons had obtained the \$20,000 Interest Funding Loan from Citizens Bank.³⁰⁰

At approximately the time of the 1983 renewal, the Interest Funding Loan was paid off and interest on the mortgage loan was brought current.³⁰¹ Two payments were made: a Whitewater check for \$18,455.34 dated the same day as the mortgage renewal, October 14, 1983,³⁰² and a disbursement from the Citizens Bank escrow account for \$6,180.89 on October 20, 1983.³⁰³ Unlike the previous renewal period (August 1981 through November 1982), interest payments appeared to have been relatively current.

The mortgage loan was extended through October 13, 1984, bearing interest at 13.5 percent, reduced from 14.5 percent. As with the other extensions, no payment of principal was required during the term of the loan.³⁰⁴

3. Operations and cash flow for fiscal year 1984.

Whitewater sold one lot in fiscal year 1984. Whitewater realized positive cash flow *before* debt service of \$27,648 in fiscal year 1984. From the project's inception through May 31, 1984, Whitewater realized positive cash flow *before* debt service of \$118,542. Despite making only one lot sale, Whitewater realized a positive cash flow from operations because expenses were minimal. As a result of required bank payments, however, Whitewater realized negative cash flow *after* debt service of \$20,456 in fiscal year 1984. Cumulatively, Whitewater through May 31, 1984 had absorbed \$146,728 in total negative cash flow after bank debt service.

The \$20,456 of negative cash flow in fiscal year 1984 was covered by contributions from other McDougal-controlled entities. On a net basis, these entities contributed a total of \$12,984; another \$7,547 came from unidentified payors. Whitewater received \$18,584 in October 1983, which went toward

300 DKRT700112; DKRT700683.

301 DKRT700112

302 DKRT101121

303 DKRT600578.

304 DKRT700112; CBF0322.

retiring the interest funding loan. Whitewater also paid \$5,600 to Jim McDougal to repay earlier advances.³⁰⁵

4. Transactions with McDougal-controlled entities.

Apart from these transactions, transactions between Whitewater and other McDougal-controlled entities for the two year period ended May 31, 1984 were fairly small. Consistent with an established pattern, one of those transactions prevented an overdraft. On December 27, 1982, a \$1,900 deposit (\$1,500 from Flowerwood Farms and \$400 from a "trustee" account) was made one day before a \$1,845.37 payment to the Bank of Cherry Valley.³⁰⁶

Additionally, Whitewater made advances to Jim McDougal, totaling \$13,264, during the two year period ending May 31, 1984. One of those advances (\$5,000 made on August 8, 1983³⁰⁷) was disbursed indirectly from funds received by Whitewater from the payoff of an installment note receivable in June 1983.³⁰⁸ As of May 31, 1984, Jim McDougal *owed* Whitewater \$7,280, representing the balance of advances disbursed to him, net of repayments.³⁰⁹

5. Summary of cash flows from August 1978 through May 1984.

The following table summarizes Whitewater's cash flows from inception of the venture through May 31, 1984. This presentation summarizes post-land acquisition activity and how operation shortfalls were generally funded. These calculations exclude cash flows that are more or less offsetting, such as the purchase of the land with bank loans (\$202,611 borrowed to buy the land for the same amount), and McDougal's refinancing of the Union Bank loan (\$20,000) with the Bank of Cherry Valley loan (\$20,000). Except for such offsetting cash flows, all cash flows are included:

305 Whitewater's payments consisted of \$5,000 on August 6, 1983 (DKRT500995) and \$600 on February 14, 1984. DKRT500990.

306 DKRT500563; DKRT500870; DKRT500874. An unidentified payor paid \$1,015 on the Bank of Cherry Valley loan on December 22, 1983; this is one of the 11 bank debt payments made by unidentified payors.

307 DKRT400503; DKRT500995.

308 DKRT501322; DKRT101164; DKRT500998; DKRT400503.

309 DKRT100350

Cash Flows Through May 31, 1984**Net Cash Outflow After Debt Service:**

Cash inflow before debt service	\$ 118,542
Less: bank debt service - interest and principal	<u>(265,270)</u>
Subtotal	(\$146,728)

Capital Improvements and Other:

Improvements, roads funded by McDougal-controlled entities	(25,052)
Model home costs and other	<u>(28,081)</u>
Subtotal	(\$194,861)

Sources to Fund Outflow After Debt Service,**Capital Improvements and Other:**

Mrs. Clinton Madison Bank loan	30,000
Cash flow provided by other bank loans ³¹⁰	50,000
Payments on Whitewater-related loans from unidentified sources	39,474
Cash flow provided by McDougal-controlled entities and McDougal	47,331
Cash flow provided by Clintons ³¹¹	<u>35,970</u>
Net cash inflow	<u>\$ 2,914</u>

To summarize, through May 31, 1984, the Clintons had advanced cash of \$35,970 to Whitewater, while the McDougals, and entities they controlled, had advanced \$47,331. These totals do not include bank debt that they had personally obligated themselves to pay (e.g., Mrs. Clinton's \$30,000 Madison Bank loan, or Jim McDougal's \$20,000 Bank of Cherry Valley loan); it focuses solely on the cash actually advanced.

310 The \$50,000 amount is comprised of the operating capital loan of \$30,000 from Madison Bank and the \$20,000 Interest Funding Loan from Citizens Bank.

311 This \$35,970 amount did not change after the Clintons made a quarterly interest payment on the Citizens Bank loan in August 1980 (and it excludes the Jonesboro transaction of \$5,691, as previously described).

VI. WHITEWATER'S NEED FOR MONEY INCREASES.

Through May 1984, the project had lost money, and the venturers had been forced to advance money to cover these losses. The amounts advanced, however, had been modest and the venturers' respective advances had been relatively even. After May 1984, this changed. The Clintons made no further advances except for modest amounts in 1986, 1988 and the early 1990s, while the McDougals made much larger advances than they had before.³¹²

Because of the volume of these advances, and because of questions that have been raised about the source of the money used to make these advances, the year and one-half after May 1984 is the central focus of this investigation and, in particular, of the effort to determine if Madison Guaranty was the source of funds transferred to Whitewater. Before discussing those tracing efforts, however, this part of the report notes a few more developments affecting the parties' and the project's debt, and the relation of this debt to Madison Guaranty.

A. The McDougals' \$143,217 loan payment to Union Bank.

On February 10, 1984, Union Bank renewed the loan that Jim and Susan McDougal had used to buy stock in Madison Bank. The McDougals were required to make a \$100,000 principal payment (reducing the loan balance to \$291,812) and to bring interest current.³¹³ On February 24, 1984, the McDougals disbursed \$143,217.41 from their joint account for this purpose.³¹⁴

The McDougals obtained two loans from Madison Guaranty to fund that disbursement: loan 1592 for \$59,000³¹⁵ and loan 1591 for \$85,000.³¹⁶ Both were dated February 24, 1984 and deposited into their joint checking account on February 23, 1984.³¹⁷ Each was a one year loan.³¹⁸ Each was secured by a second mortgage on 80 acres of land (160 acres total) located in

312 This change is depicted graphically in Chart 6.

313 WRTC00103.

314 IC01427; IC04824.

315 RTCKC11329.

316 RTCKC6592.

317 IC00423; IC01427.

318 Note #1592 for \$59,000 was paid off on February 22, 1985 from proceeds of the McDougals' \$360,000 home improvement loan (described below). Note #1591 was paid off in April 1985 by Flowerwood Farms from proceeds of a Stephens Security Bank loan of \$135,000 (also described below). RTCKC06601, 06569.

Pulaski County and junior to a first lien held by International Paper Company.³¹⁹

This is the first of many significant transactions that Jim McDougal arranged through Madison Guaranty to service his personal loans at other banks.³²⁰ To this point, the available evidence does not show any transfer of funds, direct or indirect, from Madison Guaranty to Whitewater.

B. Madison Guaranty's examination and supervisory agreement.

In January 1984, the FHLBB started a special limited examination of Madison Guaranty. The report of examination,³²¹ which was sent to Madison Guaranty's board of directors on June 1, 1984, was sharply critical of the association. It noted poor appraisal practices; loan underwriting and documentation problems; loans to affiliates; excessive concentration in real estate development projects; loans to borrowers without equity; reliance on brokered deposits; asset-liability mismatches; and questionable accounting practices.³²² The examiners determined that approximately \$565,000 of gains recognized by Madison Financial were improper. Adjusting Madison's books by that amount would have more than eliminated the net worth of the institution: It would have created a capital deficit of \$70,000.³²³

The 1984 examination led to a supervisory agreement, to which Madison Guaranty's Board of Directors consented in July 1984. The supervisory agreement limited transactions with affiliated persons, required compliance with the minimum net worth requirement and required written policies and a business plan.³²⁴ Thus, in 15 months, Madison Bank had consented to a cease and desist order, and Madison Guaranty had consented to a supervisory agreement.

319 RTCKC6569-70.

320 It is necessary to analyze the significant money flows between Jim McDougal, Madison Guaranty and other banks to obtain a complete understanding of the relationship, if any, between Whitewater and Madison Guaranty.

321 PMS0323-42.

322 PMS0326-35. Cited specifically were the Maple Creek Farms, Goldmine Springs and Campobello real estate projects financed by Madison Guaranty.

323 PMS0329.

324 RTCKC33989; PMS0478.

**C. Renewal of Governor Clinton's loan from Security Bank
Loan of Paragould.**

As noted above, after the FDIC's C&D order limited Madison Bank's ability to extend Mrs. Clinton's prefab house loan, Governor Clinton borrowed the funds from Security Bank of Paragould. That one year demand note for \$20,800, dated September 30, 1983, was extended for a year on September 30, 1984. Governor and Mrs. Clinton both signed the extension agreement. The loan interest rate decreased from 13.5 percent to 11.5 percent. The loan remained a balloon loan, with the entire amount of principal and interest due at maturity, now September 30, 1985.³²⁵

On October 4, 1984, a check to Security Bank for \$4,811.19 was written against the Whitewater account.³²⁶ Of the total, \$2,811.19 was applied to accrued interest and \$2,000 was applied to outstanding principal, reducing the balance from \$20,800 to \$18,800.³²⁷

Lot 13, it will be recalled, had been conveyed to Mrs. Clinton, who had paid to erect the prefab house on it. However, Whitewater, and not the Clintons, paid down Governor Clinton's loan. Mrs. Clinton wrote a handwritten note to Jim McDougal on October 1, 1984. The note was apparently written in connection with a final payment notice sent directly to Governor Clinton for this loan. She wrote:

Is the enclosed part of Whitewater? I believe it's for the pre-fab house we put on the land. Will you please take care of it or let me know what I need to do? Also, I need a receipt for my records that the Marion County taxes were paid. Please have it sent to me.³²⁸

Jim McDougal responded to Mrs. Clinton on October 4, 1984:

Enclosed is a check on White Water Development to pay the interest and make a \$2,000 principal reduction on the note. . . . Please forward this check to the bank and ask that the note be renewed. As you will recall, we receive monthly payments on the

325 DKRT200764.

326 DKRT500917.

327 SBP00009-12, 64; DKRT101073, 500917.

328 DKRT700556-57.

sale of the house and must use the proceeds to retire this note.³²⁹

McDougal wrote the check and included a principal reduction that apparently had not been negotiated.

Mrs. Clinton again wrote McDougal on October 22, 1984, explaining her recent activities on these issues:

I had to go ahead and pay the Marion County tax statement because of my concern that any delinquency could become fodder for election year rhetoric. I enclose a copy of the paid statement. . . . Also I asked Security Bank to extend the note but apparently my written request fell on deaf ears. Enclosed is the latest notice demanding payment. Will you please ask someone to take care of this for us?³³⁰

A year later, on October 11, 1985, Governor Clinton again extended his Security Bank of Paragould note.³³¹ A month later, on November 12, 1985, the principal had been reduced from \$18,800 to \$13,800. The next part of this report discusses the source of the funds used to make this \$5,000 principal reduction. The payment made on November 8, 1985 (a total of \$7,322.42, including interest) was greater than the \$3,422 due from lot 13 buyer Hilman Logan during the last year.³³²

During the next year (1985-1986), no principal reductions were made on the loan.³³³ It was again renewed from September 1986 to September 1987.³³⁴ On December 30, 1986, Mrs. Clinton wrote a check on the Clintons'

329 DKRT101073.

330 DKRT100735. As noted above, before 1987, there are relatively few letters to or from the Clintons pertaining to Whitewater.

331 DKRT100015.

332 SBP0013-16; DKRT100446; DKRT700360-62. Logan's payment was \$285.13 monthly, or \$3,422 annually. DKRT800748; DKRT700318. See Part VII.B.9 below.

333 SBP0064.

334 The extension agreement is unsigned. DKRT700358. Nevertheless, on March 27, 1987, Marlin Jackson, in his capacity as Bank Commissioner, wrote a letter to Mrs. Clinton:

I recall recently discussing the note that you and Bill have at Security Bank in Paragould. . . . In order to meet banking regulations it is necessary for you and Bill to sign the enclosed extension agreement. . . . By signing the extension agreement, your loan will be considered current by bank examiners and will

(continued...)

account at Worthen Bank in the amount of \$1,635.51.³³⁵ This money was applied to accrued interest outstanding on the loan.³³⁶ This is the first Clinton payment on the loan since it was originated in September 1983. As described above, Whitewater made the only other two loan payments.

Documents subpoenaed from Security Bank of Paragould do not reveal whether the loan was again renewed. One can assume it was because Whitewater's corresponding obligation to Governor Clinton was carried on Whitewater's books until December 1988, when it was retired in connection with the Clintons' repurchase of lot 13 from the bankruptcy estate of Hilman Logan.³³⁷

D. Renewal of the Citizens Bank mortgage loan.

Citizens Bank renewed the mortgage loan for the sixth consecutive year on November 26, 1984.³³⁸ The new maturity date was December 3, 1986. This was the first time the loan had been extended for more than one year. The co-makers of the loan included not only the McDougals and Clintons, as in all previous notes, but also the Company. Jim McDougal signed the note for Whitewater as President; both couples signed the note individually.³³⁹

The Citizens Bank mortgage renewal decreased the monthly payments on this loan.³⁴⁰ For example, from November 1983 through November 1984, Whitewater paid approximately \$46,000 to service the Citizens Bank mortgage. After November 1984, Whitewater needed to make monthly payments of only \$2,303.78, or \$27,645 annually.³⁴¹

334(...continued)

next be due November 20, 1987. . . . For your convenience, I am enclosing a stamped, self addressed envelope.

DKRT700390.

335 DKRT400999. This amount appears to have been counted twice in the Lyons Report. Because the payment was actually posted to the loan on January 1987 (SBP0064), it was reported by the bank as part of interest paid in 1987. DKRT200799. As discussed below, the Lyons Report therefore includes this same \$1,635.51 in both the 1987 and 1988 fiscal years.

336 SBP0064.

337 DKRT400171-73; DKRT400185; SBP0064.

338 CBF0271; CBF0275; CBF0282; CBF0322; DKRT700112; DKRT700113.

339 DKRT700113

340 DKRT700113.

341 DKRT700113

The new principal balance of the loan was \$100,121.43.³⁴² In the weeks leading up to the renewal of the loan, Whitewater had made principal reductions totaling \$22,546.96: \$17,535.32 on November 1, 1984 and \$5,011.64 on November 21, 1984.³⁴³ Whitewater, standing alone, did not have the money to make these principal reductions; only one lot had been sold since the last loan renewal.³⁴⁴ The money used to make these payments was deposited into Whitewater's checking account by four McDougal-controlled entities, as detailed below.

E. Summary of advances to Whitewater from McDougal-controlled entities.

Much of the need to infuse funds into Whitewater between late 1984 and early 1985 was the result of the need to make payments to third-party banks: Citizens Bank, Bank of Cherry Valley and Security Bank. In this period (essentially fiscal 1985), lot sale revenues and installment collections totaling \$23,131 did not suffice to make these payments. By the fall of 1984, Whitewater needed outside sources of capital to make (1) additional payments required on the Citizens Bank mortgage of \$24,000, (2) debt service on other Whitewater-related bank loans (Bank of Cherry Valley³⁴⁵ and Security Bank of Paragould³⁴⁶) totaling \$20,658, and (3) payments to Wade and Ozarks Realty Co. of \$28,000. Combined, these payments amounted to \$72,658. Whitewater also received another \$30,000 from Madison Financial, which brings the total received from outside sources to \$102,658. The disposition of the \$30,000 is discussed in Part VIII.A below.

The need for the bank debt payments is fairly obvious, but the rationale for the payments to Wade and Ozarks Realty is less clear. These include a \$3,000 payment to Wade on February 15, 1985³⁴⁷ and a \$25,000 payment to

342 *Id.*

343 CBF0436; DKRT500939; IC24841; DKRT500937.

344 DKRT700533.

345 The final payment on this loan was made January 4, 1985. See Part VII.B.5 below.

346 BCV0033; BCV0037; BCV0038.

347 DKRT501060; DKRT501058. In an Associated Press article dated June 8, 1994, Wade stated there was no connection between this \$3,000 payment and his \$2,000 donation to Governor Clinton made at the Madison Guaranty fund-raiser on April 4, 1985 (discussed below). He is otherwise uncertain what the money was used for. "That was just too long ago," he said.

Ozarks Realty on March 22, 1985.³⁴⁸ Both payments were recorded as commissions on Whitewater's general ledger.³⁴⁹ But between April 1982 and March 22, 1985, only four lot sales (for a combined price of \$40,000 and for cash of \$11,600) had taken place.³⁵⁰ The most recent sale, of lot 18 to Callahan, had occurred on January 22, 1985.³⁵¹

Whatever the rationale, all these payments were covered by deposits into Whitewater between September 10, 1984 and May 1, 1985 from McDougal-controlled entities amounting to \$103,342, as follows:³⁵²

Deposits From McDougal-Controlled Entities

<u>McDougal-Controlled Entity</u>	<u>Amount</u>
Flowerwood Farms	\$38,886
Madison Financial Corporation	30,000
Tucker-Smith-McDougal	12,200
Pembroke Manor	10,430
Madison Marketing	5,566
Smith-McDougal	900
Great Southern Land	650
Rolling Manor	3,730
Smith-Tucker-McDougal	500
Jim McDougal, trustee	<u>480</u>
 Total	 <u>\$103,342</u>

348 DKRT101152. In the June 8, 1994 Associated Press article Wade said he believed his company (Ozarks Realty Co.) received the \$25,000 payment because he and McDougal were planning to buy a piece of property adjoining Whitewater. "I think that was the deposit and then the offer didn't go through and I just gave it back to him." When Wade was told there was no record of the money returning to Whitewater's account he responded: "I've heard that." Wade also said there was no relationship between this payment and his purchase in May 1985 of all the unsold Whitewater lots (discussed below). "That I'm sure," he said.

349 DKRT600081.

350 DKRT700533, 400049, 200470, 101027.

351 DKRT101025.

352 These figures are based on financial reconstruction. The deposits would more nearly equal the payments but for the inclusion among the deposits of the \$30,000 bonus that essentially passed through Whitewater on its way elsewhere. See Part VIII.A below. Excluding this, the deposits in this period equal \$73,342 and the third-party payments equal \$72,658.

In addition, Whitewater received a \$7,500 deposit from Madison Marketing on November 8, 1985 (in fiscal year 1986). Adding this to the fiscal 1985 total above increases the total of deposits that Whitewater received from McDougal-controlled entities to \$110,842. Two other fiscal year 1986 deposits added another \$2,700, making the total \$113,542.³⁵³

McDougal acquired control of Madison Guaranty in fiscal year 1983. In that fiscal year (1983) and the next fiscal year (1984), McDougal-controlled entities deposited \$20,752 into Whitewater.

Therefore, in total, between McDougal's acquisition of Madison Guaranty and the end of fiscal year 1986, McDougal and McDougal-controlled entities deposited \$134,294 into Whitewater. As stated previously, the central focus of this investigation is to determine whether the funds used to make these payments came directly or indirectly from Madison Guaranty and, if so, whether such funds transfers were improper.

VII. INVESTIGATION OF THE POSSIBLE FLOW OF FUNDS FROM MADISON GUARANTY TO WHITEWATER.

A. Overview of funds transfers.

Funds were traced using the methodology described in Part I and further detailed in Part X of this report. Using this methodology, and subject to these qualifications, the attempt was made to trace the ultimate source of all \$134,294 deposited by McDougal and McDougal-controlled entities into Whitewater during the years in which McDougal controlled Madison Guaranty.³⁵⁴ "All" deposits by the McDougals or McDougal-controlled entities means exactly that: This was not a sampling procedure but an attempt to trace every last cent deposited into Whitewater's accounts by McDougal or a McDougal-controlled entity during that period.³⁵⁵

For present purposes, the \$134,294 can be split into four pieces:

353 DKRT400486, DKRT100976; IC34954. The source of these deposits cannot be determined from the available documentation.

354 The results of the work to date are summarized in Chart 7.

355 This \$134,294 was not by any means the sum total of money that was deposited into Whitewater's account or otherwise was paid for the benefit of Whitewater during these years. Other money came from sources other than McDougal and McDougal-controlled entities, principally from monthly payments from purchasers of Whitewater lots and from the bank loans discussed in this report. The purchasers have no known ties to McDougal, McDougal-controlled entities or Madison Guaranty.

- \$30,000 presents no tracing issue; it came directly from Madison Financial to Whitewater. Because this deposit presents no tracing issue, it is discussed in Part VIII.A rather than here.
- \$20,752 cannot be traced because the necessary documents apparently do not exist. This sum consists of deposits made in fiscal years 1983 and 1984. As noted earlier, bank statements, microfilm and transaction detail covering this period apparently do not exist.³⁵⁶ Of the \$20,752, \$2,168 was deposited to Whitewater in several transactions in late 1982 and early 1983.³⁵⁷ The remaining \$18,584 was deposited to Whitewater on October 20, 1983 and consisted of two items, one for \$17,000 and the other for \$1,584.³⁵⁸ Whitewater's general ledger records the entire \$18,584 as a loan from Jim McDougal.³⁵⁹

The remaining \$83,542 was deposited into Whitewater's accounts through 11 separate multi-step transactions, nine of which will be discussed below.³⁶⁰ This \$83,542 can be split into two pieces, one of \$58,022 and the other of \$25,520:

- The traceability of \$58,022, relating to six of the 11 separate multi-step transactions, can be established. The available documentation does not, however, explain the business purpose of these transactions or the intent of those who participated in them. Any resolution of the issue of purpose and intent would require further investigation, including information from a number of potential witnesses. See Part X.B below.
- The traceability of the remaining \$25,520, relating to the other five separate multi-step transactions, cannot be established. In large part, this is a result of the fungibility problem: The accounts through which this money flowed had sufficient balances so that the true source(s) of the funds that reached Whitewater cannot be determined from documentary evidence alone.

356 Bank statements and microfilm from the Independent Counsel were obtained through our Fed. R. Crim. 6(e) petition and pursuant to a federal district court order. The Independent Counsel's staff has confirmed that bank statements and film for this period are missing.

357 DKRT500870; DKRT500553; DKRT500832; DKRT500841; DKRT100368; DKRT100350.

358 DKRT400931; DKRT500973.

359 DKRT100358. This loan enabled Whitewater to retire the Interest Funding Loan.

360 The source of the other two deposits, totaling \$2,700, could not be determined. Both occurred in fiscal year 1986, \$1,500 on July 3, 1985 and \$1,200 on October 18, 1985.

Generally speaking, the transfers of cash from McDougal-controlled entities into Whitewater were timed either to prevent or cure overdrafts. In chronological order, nine transactions are summarized in the next nine parts of this report (Parts VII.B.1 through VII.B.9).³⁶¹

B. Analysis of nine deposits into Whitewater while McDougal controlled Madison Guaranty.

1. September 1984 deposit into Whitewater of \$7,500 from Tucker-Smith-McDougal.

Transaction:

A September 10, 1984 deposit from Tucker-Smith-McDougal for \$7,500³⁶² cured an overdraft in the Whitewater bank account caused by a \$7,500 check (#118) written to the Bank of Cherry Valley for a loan payment posted on September 7, 1984.³⁶³

Findings:

Chart 8 depicts the findings. The following text helps explain the chart:

Tucker-Smith-McDougal received a \$14,690 deposit on September 10, 1984.³⁶⁴ The same day it deposited \$7,500 into Whitewater; the check, signed by "S. McDougal," labels the deposit a "Loan."³⁶⁵ The \$14,690 came to Tucker-Smith-McDougal from West-Ark Construction, a sole proprietorship owned by R. D. Randolph.³⁶⁶ This deposit increased Tucker-Smith-

361 These nine deposits are summarized in Chart 7. Further charts detail the six of the nine where some relationship exists between Whitewater and Madison Guaranty. See Charts 8 through 13.

362 DKRT500894, 96

363 DKRT500894, 98.

364 IC14604; CR0267.

365 IC14654.

366 Randolph production 044315. Randolph and McDougal have known each other since 1958. They worked together on a Kennedy campaign and later for Senator Fulbright. Randolph's wife, Kirby, worked as a receptionist at Madison Guaranty. Randolph Interview, June 7, 1994, at 4-5 and 27. West-Ark Construction never was incorporated. It was a sole proprietorship established to perform earthmoving services at Madison Financial's real estate projects. Randolph Interview, Mar. 9, 1995, at 5:4-7:15.

McDougal's account balance from \$274 to \$14,964, just before the posting of two checks on that same day.³⁶⁷

West-Ark's bank accounts were not at Madison Guaranty but First Federal of Arkansas. West-Ark frequently received money from Madison Financial.³⁶⁸ More than a week before Tucker-Smith-McDougal's September 10 deposit into Whitewater, Madison Financial made two disbursements to West-Ark totaling \$50,545: \$20,545 posted on August 30, 1984 and \$30,000 posted on September 12, 1984.³⁶⁹ Each disbursement increased the amount by which Madison Financial's account at Madison Guaranty was overdrawn. The overdraft was substantial; for example, the \$20,545 posted on August 30, 1984 increased it to \$409,772.³⁷⁰

Discussion:

For most of the nine transactions presented in this part of the report, the findings rely solely on the available documentation. For this transaction, however, the interviews of R. D. Randolph provide an explanation for parts of this transaction that the documents, standing alone, would not suggest. To probe Randolph's explanation, it is helpful to break down the transactions touching West-Ark Construction into two parts: the payments from Madison Financial to West-Ark; and the payment from West-Ark to Tucker-Smith-McDougal.

Madison Financial to West-Ark: The documents do not indicate the business purpose, if any, of the payments by Madison Financial to West-Ark, but they likely were payments for construction work. West-Ark performed construction work on Maple Creek, Greentree Farms, Fair Oaks, Castle Grande, Campobello, Brittany Point and Eden Park.³⁷¹ Randolph does not recall when he was paid for which jobs, and he has no records that clarify the point,³⁷² but other documentary evidence establishes that at least several of

367 CR0267.

368 This, in itself, is not surprising. Madison Financial was West-Ark's only customer of any consequence. Randolph Interview, Mar. 9, 1995, at 6:9-7:15. See also Randolph Interview, June 7, 1994, at 10. The June 1994 transcript was prepared from a taped conversation and requires some interpretation.

369 IC14170; IC14773; IC01201; IC01179. Paul Castleberry signed each check.

370 IC01201.

371 Randolph Interview, Mar. 9, 1995, at 24:21-27:4.

372 *Id.* at 27:7-10.

these projects were active in the summer of 1984.³⁷³ Thus, there was reason for Madison Financial to be sending money to West-Ark.

Whether the amounts sent were appropriate is more difficult to say. Randolph was a cattle rancher by profession, not a contractor. He formed West-Ark to do work for Madison Financial and, as noted, Madison Financial was essentially West-Ark's only customer.³⁷⁴

Madison Financial did not put its construction work out to bid. Nor did it negotiate the price in any meaningful sense, although there was some understanding that work would be charged for on a time-and-materials basis. When Jim McDougal would ask Randolph to undertake some work, McDougal might ask Randolph what he thought the job would cost, or Randolph might just send Madison Financial a bill, but typically no real dickering over price took place.³⁷⁵ The documents provide no basis to assess the reasonableness of the prices charged.

West-Ark to Tucker-Smith-McDougal: West-Ark records indicate that the payment by Madison Financial to Tucker-Smith-McDougal (check #496 dated September 6, 1984) was to "repay loan."³⁷⁶ The documentary evidence does not reveal why West-Ark transferred money to Tucker-Smith-McDougal, but Randolph has an explanation.

West-Ark made a series of five-figure payments to McDougal-controlled entities: four to Flowerwood Farms³⁷⁷ and one to Tucker-Smith-McDougal. According to Randolph, all five were partial payments for 160 acres of land in Pulaski County that McDougal bought from International Paper and resold to Randolph.³⁷⁸ Randolph named the parcel "Dogpatch Addition,"³⁷⁹ developed it and sold lots to third persons.

373 See Jordan & Keys' interim report dated December 7, 1994.

374 Randolph Interview, Mar. 9, 1995, at 5:12-9:23.

375 Randolph Interview, Mar. 9, 1995, at 85:6-86:5, 90:19-91:16, 93:6-94:7, 96:7-98:24.

376 Randolph doc. 044397.

377 Numerous payments were made by West-Ark to Flowerwood Farms, four of which were at least \$12,000, in 1984: \$12,000 on January 18, 1984; \$30,000 on June 21, 1984; \$12,000 on November 5, 1984; and \$18,400 on December 10, 1984. Each of these payments was labeled "Land Payment. Flowerwood Farms."

378 Randolph Interview, Mar. 9, 1995, at 35:15-39:7, 42:2-18, 43:21-48:10.

379 *Id.* at 46:24-47:4

Both sales--International Paper to McDougal and McDougal to Randolph--were contract-for-deed transactions, so title did not change hands until all payments were made. Randolph does not remember the purchase price but he does remember that McDougal did not complete his own payments to International Paper:

Q. What did you pay for the hundred and sixty acres?

A. I do not remember what I gave the dude for it if you want to get down to it. What he done, you see, he bought it on contract from IP, of course.

Q. Uh-huh.

A. And we had an agreement with, you know, a handshake agreement, so much money, and then whenever it, when the final wipeout, he hadn't paid it off. I had already developed the land and sold it and held about 18 or 20 contracts with other people, so I had to cough up another --

THE WITNESS: Do you remember how much it was Bob? Eighteen or twenty thousand dollars.

MR. McHENRY [Randolph's lawyer]: Several thousand dollars.

THE WITNESS: Several thousand dollars to pay IP.³⁸⁰

Whatever the price was, Randolph did not pay McDougal on any set basis, nor did he make out his checks to McDougal. Instead,

whenever I would make him a payment on this, and it was done so he don't have to go back through this irregularly, it was whenever he needed some money or whenever I had enough money to make him a payment. And he might say, make the check out to Flowerwood Farms. He might say make it out to someone else or make it out to someone else. He put the money wherever he so desired, which I, of course, did not give a dang one way or another what he did with the money. And that's how that's, that's how those checks came about.³⁸¹

Randolph says he knew that Tucker-Smith-McDougal and Flowerwood Farms were McDougal-owned entities and owned real estate somewhere, but

380 *Id.* at 36:17-37:6.

381 *Id.* at 36:5-13.

he does not know where, or what exactly those entities did.³⁸² Randolph's payments to these entities had nothing to do with these entities; they were payments for the International Paper land.

Q. And why would [the money] go to Flowerwood or other people?

A. That's where he wanted them made to.

Q. And so Jim would come to you and say, Kirby or R. D., I want a check payable to --

A. Yeah. I need a payment or I'm running short on money or I might have made a little money and saved money to make a payment.

.....

Q. Did he give you any indication at the time that he asked for the money what he needed it for?

A. No. Not Jim McDougal.

Q. Why not Jim McDougal?

A. That's right.

Q. He wouldn't tell people things like that?

A. That's right.³⁸³

Randolph also says he has no idea where the money went after it reached Tucker-Smith-McDougal, or Flowerwood Farms.³⁸⁴

The casual manner in which these funds were handled should not obscure the fact that Randolph's explanation, if credited, provides a justification for the funds transfer from West-Ark to Tucker-Smith-McDougal. True, the money for International Paper's Pulaski County property was owed to McDougal, and not to Tucker-Smith-McDougal, but there is nothing *per se* unlawful about McDougal directing that funds owed him be paid to somebody else. Whether Randolph's explanation should be credited, however, and what

382 *Id.* at 27:11-29:14. He later said he might have "done some work [on Flowerwood] if that was the one up by Conway." Randolph never owned any property there. *Id.* at 30:11-31:10, 35:22-24.

383 *Id.* at 38:2-39:11.

384 *Id.* at 33:13-24.

motivation Randolph and McDougal had for acting in this way are questions that cannot be resolved from the available evidence.

As shall be seen, the foregoing discussion applies to a portion of the transaction presented in Parts VII.B.3, VII.B.5 and VII.C below, as they too involve West-Ark and perhaps Dogpatch Addition to some extent.

2. **October 1984 deposit of \$3,050 Into Whitewater from Great Southern Land, Pembroke Manor, Smith-McDougal and Jim McDougal as trustee.**

Transaction:

A deposit into Whitewater's account on October 26, 1984 totaling \$3,050³⁸⁵ (\$650 from Great Southern Land, \$1,700 from Pembroke Manor, \$500 from Smith-McDougal and \$200 from a Jim McDougal trustee account) cured an overdraft caused by a \$4,811.19 check (#121) written to Security Bank of Paragould posted on October 11, 1984.³⁸⁶

Findings:

The source of funds used by Great Southern Land to make its \$650 payment into Whitewater were four deposits received by Great Southern Land from August 1, 1984 through October 22, 1984, ranging from \$98.00 to \$237.88.³⁸⁷ The deposits were from individuals with no known connection to McDougal.

The McDougal trustee account maintained a balance of at least \$255.55 from as early as June 1984.³⁸⁸ A single deposit in the amount of \$223.74 was made into the account on July 12, 1984--more than three months before the Whitewater transfer. No transactional detail is available for this deposit.³⁸⁹

Smith-McDougal's account was at Madison Bank. The documents obtained by subpoena do not make it possible to trace the funds it used to make the \$500 deposit into Whitewater.

385 DKRT500905, 13.

386 DKRT500905; DKRT500917.

387 IC13432; IC13070; IC24448; IC15469.

388 IC01225.

389 IC011236.

Finally, a \$1,530.04 deposit from Quapaw Title Co. on October 25, 1984 into Pembroke Manor enabled the company to make its \$1,700 deposit into Whitewater on the same day.³⁹⁰

The documentary evidence does not permit a determination of whether these deposits have any relationship to Madison Guaranty.³⁹¹

3. November 1984 deposits totaling \$17,566 from Flowerwood Farms and Madison Marketing into Whitewater.

Transaction:

The Whitewater checking account was overdrawn by \$17,707.87 as a result of an \$18,000 payment made to Citizens Bank³⁹² (check #124) posted on November 6, 1984.³⁹³ The next day, a \$12,000 deposit from Flowerwood Farms was posted,³⁹⁴ reducing the overdraft to \$5,707.87.³⁹⁵ The account continued to be overdrawn until two more deposits came in: a November 20, 1984 deposit of \$5,566.39 from Madison Marketing;³⁹⁶ and a November 27, 1984 deposit of \$143.65 from Logan Charter Services.³⁹⁷

Findings on the Flowerwood Farms deposit:

Chart 9 depicts the findings. The following text helps explain the chart:

Flowerwood Farms received a \$12,238 deposit posted to its Madison Guaranty account on November 5, 1984, one day before its disbursement of \$12,000 to Whitewater.³⁹⁸ The primary source of the deposit into Flowerwood

390 IC15267; IC15217. Quapaw Title operated from a Madison Guaranty office. It had a close business relationship with Madison Guaranty, although it was not owned by McDougal, a McDougal-controlled entity or Madison Guaranty.

391 Therefore, a chart of this transaction has not been prepared.

392 DKRT500939.

393 DKRT100019.

394 DKRT500931; IC24758. "S. McDougal" signed the check and labeled it a "Loan."

395 DKRT100019.

396 DKRT500932.

397 DKRT500935. Logan owned lot 13.

398 IC24994. Bank statements for Madison Guaranty accounts were not available for October-November 1984. Therefore no daily balances are available.

Farms was \$12,000 received from West-Ark for "land payment."³⁹⁹ As with the September 10, 1984 transaction involving Tucker-Smith-McDougal, in the two weeks before West-Ark's payment to Flowerwood Farms, it received money from Madison Financial: \$6,000 on October 23, 1984 and \$6,650 on October 30, 1984.⁴⁰⁰

This alone, however, does not establish that Madison Financial funded West-Ark's check to Flowerwood Farms. West-Ark banked at First Federal of Arkansas. Madison Financial's deposits into the West-Ark account were analyzed. The available evidence does not establish that Madison Financial funds flowed through West-Ark and Flowerwood Farms to Whitewater. The account had money in it before the deposits of October 23 and 30, 1984, and deposits from sources other than Madison Financial were received in this period.⁴⁰¹

Even if it were shown that Madison Financial funds flowed through West-Ark and Flowerwood Farms to Whitewater, R. D. Randolph has provided an explanation as to why West-Ark paid money to Flowerwood Farms: because Jim McDougal asked that payment on "Dogpatch Addition" be made in this fashion. If Randolph's testimony is credited, the transfer from West-Ark to Flowerwood Farms has a basis entirely independent of Flowerwood Farms' later transfer of funds to Whitewater.⁴⁰²

Findings on the Madison Marketing deposit:

Chart 10 depicts the findings. The following text helps explain the chart:

Madison Marketing was an entity owned by Susan McDougal.⁴⁰³ Few records document its existence, but it apparently functioned to collect the advertising agency commissions on advertisements placed by Madison Guaranty and its affiliates with the media. Madison Guaranty and its affiliates placed a significant amount of advertising. Typically, an advertising agency receives 15 percent of all fees paid for advertising. The McDougals apparently decided that outside advertising agencies added little value to the process.

399 IC25585. R. D. Randolph signed this check.

400 IC15207; IC25598. Both checks were signed by Paul Castleberry.

401 Randolph doc 044318-1C Specifically, another \$9,992 was received on October 30, 1984.

402 See Part VII.B.1 above.

403 The 1986 Report of Examination indicates that Madison Marketing was incorporated by Lisa Aunspaugh. PMS0477. The Secretary of State has no record of such incorporation. It is not clear that Madison Marketing had any purpose except to collect 15 percent of advertising expenditures.

Therefore, they set up Madison Marketing and kept the 15 percent themselves.⁴⁰⁴

The analysis of this November 20, 1984 deposit into Whitewater from Madison Marketing of \$5,566 is made difficult by the absence of November 1984 bank statements. What is apparent from Madison Marketing's account is that many large deposits were made during the month of November. Thus, the documentary evidence does not permit the determination of any one source of the \$5,566 disbursement to Whitewater. For example, a deposit of \$45,171 was made into Madison Marketing from Madison Financial on November 5, 1984.⁴⁰⁵ On November 16, 1984, a \$14,956 deposit was made into Madison Marketing's account including \$5,035 from Whitener & Associates.⁴⁰⁶ Once again, the evidence does not reveal whether business relationships among those entities might have warranted the funds transfers at issue. In this instance, it may be especially difficult to determine the business purpose of particular transfers, because Madison Marketing arranged advertising for most of the McDougal-controlled entities.

4. November-December 1984 deposit into Whitewater of \$9,310 from Tucker-Smith-McDougal, Rolling Manor and Jim McDougal as trustee.

Transaction:

A check for \$6,000⁴⁰⁷ (check #126 payable to Citizens Bank for payment on the mortgage loan⁴⁰⁸) was posted to Whitewater's checking account on November 29, 1984,⁴⁰⁹ creating a \$5,886.35 overdraft. Eight days later on December 7, 1984, a \$9,310 deposit⁴¹⁰ (\$7,100 from Pembroke, \$1,600 from Tucker-Smith-McDougal, \$330 from Rolling Manor and \$280 from a Jim McDougal trustee account) was posted to the account, creating a positive

404 PM^c0477; RTCKC8910-11.

405 IC25583.

406 IC16396; ICI6512.

407 DKRT500937.

408 On October 30, 1984, Jim McDougal wrote to Citizens Bank: "We are unable to make the \$24,000 principal reduction on the Whitewater note. However, I am enclosing an \$18,000. payment and we will be able to make an additional \$6,000. payment within 30 days." CBF0335. The documents do not reflect how McDougal planned to obtain the \$6,000 within 30 days; Whitewater had no money in its checking account.

409 DKRT100019.

410 DKRT500923.

balance of \$3,423.65.⁴¹¹ Three days later on December 10, 1984, a \$3,276.18 Whitewater check written to the Bank of Cherry Valley⁴¹² to service McDougal's loan was posted. Because of these deposits, the account had sufficient funds to cover it.

Findings:

The deposits from Tucker-Smith-McDougal (\$1,600) and Rolling Manor (\$330) into Whitewater are relatively small. The money used to make these deposits came from several individuals.

The source of funds enabling the Jim McDougal trustee account to disburse \$280 to Whitewater was provided at least several months earlier. The last deposit into that account was in July 1984.⁴¹³

The funds enabling Pembroke Manor to disburse \$7,100 to Whitewater were posted to Pembroke's account one day earlier from Quapaw Title Co. in the amount of \$7,109.20.⁴¹⁴ A check stub in Quapaw Title's documents said that the money came from a Berkau, who apparently had bought a lot at Pembroke Manor.⁴¹⁵

5. January 1985 deposit into Whitewater of \$4,660 from Rolling Manor, Flowerwood Farms, Pembroke Manor, Tucker-Smith-McDougal and Smith-McDougal.

Transaction:

On January 10, 1985, Whitewater received a deposit of \$4,660: \$1,500 from Rolling Manor; \$1,430 from Flowerwood Farms; \$730 from Pembroke Manor; \$600 from Tucker-Smith-McDougal; and \$400 from Smith-McDougal. This increased the account balance from \$435.27 to \$5,095.27.⁴¹⁶ One day later, check #128 written to the Bank of Cherry Valley for \$5,071.23 was posted

411 DKRT400541.

412 DKRT500926.

413 IC01236.

414 IC00746; IC17050.

415 IC22485. The next check, for four dollars, paid the Pulaski County Clerk, apparently for recording Berkau's deed. *Id.*

416 DKRT501035, 37.

to the account. The previous \$4,660 deposit was sufficient to cover this payment, leaving a balance of \$24.04.⁴¹⁷

Findings:

The deposits into Whitewater from Tucker-Smith-McDougal (\$600), Pembroke Manor (\$730) and Rolling Manor (\$1,500) are small relative to the prior deposits received by each entity. No evidence has been identified linking these deposits to Madison Guaranty.

Flowerwood Farms received deposits from several sources shortly before it disbursed \$1,430 to Whitewater:

- On December 11, 1984, Flowerwood received \$18,400 from West-Ark Construction.⁴¹⁸ According to R. D. Randolph, this was another in the series of his payments for Dogpatch Addition; he has no idea what Flowerwood Farms did with the money.⁴¹⁹
- From December 11, 1984 through January 9, 1985, however, Flowerwood also received deposits totaling \$1,711 from several individual sources.⁴²⁰

Both sets of deposits exceed the \$1,430 disbursement to Whitewater. Hence, money being fungible, the documentary evidence does not disclose the source of the funds used to make Flowerwood Farms' transfer of funds to Whitewater.

6. January 1985 deposit into Whitewater of \$1,000 from Flowerwood Farms.

Transaction:

On January 25, 1985, a \$1,000 deposit, consisting of a check written on Whitewater's checking account at Madison Guaranty, was posted to Whitewater's escrow account at Citizens Bank, increasing the escrow account's balance to \$1,478.48.⁴²¹ The disbursement from Whitewater's Madison

417 DKRT501035; IC17841.

418 IC00787; IC16856.

419 Randolph Interview, Mar. 9, 1995, at 47:17-48:10.

420 IC00787; IC01569.

421 DKRT400477; DKRT501045. The "memo" line on the check reads "Deposit Acct 317-5," which is the number for Whitewater's escrow account at Citizens Bank.

Guaranty checking account was posted to that account on January 28, 1985.⁴²² There would not have been enough money in the checking account to cover the check but for the fact that the same day, January 28, 1985, the Whitewater checking account had received a deposit of \$1,000 from Flowerwood Farms,⁴²³ increasing the balance of Whitewater's checking account from \$446.07 to \$1,446.07.⁴²⁴ Later, on February 6, 1985, a Citizens Bank loan payment for \$2,303.78 reduced the Citizens Bank escrow account balance to \$19.53.⁴²⁵

Findings:

Chart 11 depicts the findings. The following text helps explain the chart:

On January 21, 1985, Flowerwood Farms' account had a balance of just \$867.⁴²⁶ Two days later, Flowerwood Farms received a deposit of \$28,500, drawn on Bill Henley's account at Madison Guaranty,⁴²⁷ which increased Flowerwood Farms' account balance to \$29,267.

Earlier, on January 10, 1985, Henley's account received \$46,000 from Madison Real Estate.⁴²⁸ In turn, Madison Real Estate received \$46,000 from Madison Financial posted to its account the next day.⁴²⁹ From these facts, a connection can be made from Madison Financial to Flowerwood Farms with respect to \$28,500. The only deposit into Flowerwood Farms during this period was the Henley deposit. Hence, without the Henley money, Flowerwood Farms would not have been able to disburse the full \$1,000 to Whitewater--at most, it could have transferred all of the \$867 it had in its account. Therefore, the amount as to which traceability between Madison Financial and Whitewater can be established is \$133--the difference between the \$1,000 Flowerwood Farms disbursement to Whitewater and the \$867 balance in Flowerwood Farms' account before the Henley deposit. The available evidence does not disclose the underlying basis for the transactions between Bill Henley and Madison Real Estate, or between Madison Real Estate and Madison Financial Corporation.

422 DKRT100977; DKRT501035.

423 DKRT501041.

424 DKRT501035

425 DKRT400478

426 IC01569.

427 Account number 3311634. IC01610; IC18441

428 IC17837; IC17672.

429 IC01568; IC17776; IC17929.

7. February-March 1985 deposit into Whitewater of \$5,800 from Tucker-Smith-McDougal, Pembroke Manor, Rolling Manor and Smith-Tucker-McDougal.

Transaction:

For three weeks starting February 21, 1985, the Whitewater checking account at Madison Guaranty was overdrawn. Check #133 was written from the Whitewater checking account for \$1,625 payable to Charles James for "Accounting Fee," and was posted February 21, 1985.⁴³⁰ This check left the account overdrawn by \$1,192.06.⁴³¹ One week later on February 28, 1985, a \$1,000 check to Whitewater's Citizens Bank escrow account was posted to Whitewater's checking account, increasing the checking account's overdraft to \$1,906.93.⁴³²

On March 13, 1985, with the account still overdrawn, a \$3,000 check written to Chris Wade was posted to the Whitewater checking account, increasing the overdraft to \$4,891.03.⁴³³ This is one of the two unexplained payments to Wade or Ozarks Realty discussed earlier.⁴³⁴

The same day, two deposits amounting to \$5,800 were posted.⁴³⁵ The first was \$2,500 from Tucker-Smith-McDougal.⁴³⁶ The second was \$3,300 from the following: Pembroke Manor (\$900); Rolling Manor (\$1,900); and Smith-Tucker-McDougal (\$500).⁴³⁷ Together, the two deposits cleared up the overdraft.⁴³⁸

430 DKRT501052; IC02179.

431 DKRT501045; IC02179.

432 Other miscellaneous items were posted to Whitewater's checking account between February 21 and February 28, 1985. IC02179.

433 DKRT501060; IC02180.

434 See Parts IV.A.3 and VI.E above. The other is discussed in Part VII.B.8 below.

435 DKRT501058; DKRT501065; DKRT501066; IC02180.

436 DKRT501065

437 DKRT501066.

438 IC02180.

Findings:

On January 31, 1985, after two deposits for \$5,301 had been posted (\$1,365 from Harold Allen Mortgage Co. and \$3,936 from R&F Investment⁴³⁹), the balance of the Tucker-Smith-McDougal account at Madison Guaranty (taking into account nominal charges) was increased from \$648.99 to \$5,953.22.⁴⁴⁰ Later, four deposits, including a \$1,150 deposit from an unknown source⁴⁴¹ and three checks were posted to the account. One of the checks drawn was \$3,000 to Jim McDougal on February 7, 1985.⁴⁴² These transactions left a balance of \$2,572.31 just before the \$2,500 disbursement to Whitewater on March 13, 1985.⁴⁴³ Therefore, the funds used for this Whitewater disbursement were covered by the deposits listed above and have no known connection to Madison Guaranty.

Similarly, the money that funded disbursements into Whitewater from Pembroke Manor (\$900) and Rolling Manor (\$1,900) came from several individuals who have no known connection to Madison Guaranty. The ultimate source of funds for the \$500 Smith-Tucker-McDougal deposit has not been established; that entity did not maintain its account at Madison Guaranty.

8. April 1985 deposit into Whitewater of \$24,456 from Flowerwood Farms.

Transaction:⁴⁴⁴

The \$25,000 check #137 to Ozarks Realty Co. discussed previously⁴⁴⁵ was posted to Whitewater's checking account on April 1, 1985, creating a \$24,470.90 overdraft.⁴⁴⁶ Eight days later on April 9, 1985, a deposit into

439 IC01577; IC23008; RTCKC0234.

440 IC02165; IC01577.

441 A Madison Financial check database indicates that the deposit was received from First Mortgage Inc., which had no known connection to Madison Guaranty. CR0536.

442 IC02165; IC23369.

443 IC02166.

444 Between this transaction and the next one, Mrs. Clinton and her law firm started to represent Madison Guaranty in connection with a proposed acquisition of a brokerage and a proposed offering of preferred stock. That work, which continued until the summer of 1986, is beyond the scope of this report.

445 See Parts IV.A.3 and VI.E above.

446 DKRT101156; DKRT101152.

Whitewater from Flowerwood Farms was made for \$24,455.90. After that deposit, the account remained overdrawn by \$15.00.⁴⁴⁷

Findings:

Chart 12 depicts the findings. The following text helps explain the chart:

The source of Flowerwood Farms' \$24,456 deposit into Whitewater on April 9, 1985 was proceeds of a \$135,000 loan from Stephens Security Bank deposited into Flowerwood Farms' account on April 3, 1985.⁴⁴⁸ A Truth-in-Lending disclosure statement dated April 3, 1985 indicates that this loan was a demand note due in one year on April 3, 1986, bearing interest at 13 percent. The disclosure statement also indicates that "real estate" was security for the loan.⁴⁴⁹ The Stephens Security Bank loan was eventually paid off in January and April 1986 in part with funds originating from Madison Financial and in part with a loan from David Hale's Capital Management Services.

On January 7, 1986, the McDougals' joint account at Madison Guaranty was credited with a \$75,949 deposit received from Madison Financial.⁴⁵⁰ On January 23, 1986, a check for \$40,000 drawn against the McDougals' account was paid to Stephens Security Bank.⁴⁵¹ This payment was applied directly to the principal balance of the Flowerwood Farms loan, reducing it to \$95,000.⁴⁵² Hence, the \$75,949 Madison Financial deposit into the McDougals' account enabled them to fund the payment to Stephens Security Bank. This repaid in part Stephens Security Bank's earlier loan to Flowerwood Farms.

On April 8, 1986, the McDougals deposited \$300,000 into their joint account from Capital Management Services, run by David Hale.⁴⁵³ Using those proceeds, the McDougals funded another payment to Stephens Security Bank. A check was posted to the McDougals' account on April 8, 1986 for \$111,524.⁴⁵⁴ This retired the Flowerwood Farms loan.⁴⁵⁵

447 RTCKC0460.

448 IC00969; IC32290.

449 SSB3.

450 IC00748; IC42743.

451 SSB5; IC00750; IC06172.

452 SSR6

453 IC02154; IC52550. Hale's loan is discussed in greater detail in Part VIII.C below.

454 IC02154; IC52408.

It is possible that the Capital Management Services loan entirely funded the ultimate deposit to Whitewater, as the payment to Stephens Security Bank funded by the Capital Management loan exceeded \$25,000. It also is possible that Madison Financial's \$75,949 payment to the McDougals of January 7, 1986 could have entirely funded the deposit to Whitewater, as the payment to Stephens Security Bank funded by the Madison Financial money also exceeded \$25,000. Because money is fungible, neither possibility can be proved, or disproved, from the available evidence standing alone.

This transaction (and, in part, the previous transaction), unlike the others discussed here, funded a payment by Whitewater to Chris Wade, a business associate of McDougal, whereas the others funded payments to lenders (i.e., banks) unaffiliated with McDougal. The \$24,456 deposit from Flowerwood Farms to Whitewater was passed to Chris Wade through a \$25,000 check written from the Whitewater account on March 22, 1985.⁴⁵⁶

9. November 1985 deposit into Whitewater of \$7,500 from Madison Marketing.

Transaction:

A \$7,500 deposit from Madison Marketing on November 8, 1985 funded a November 15, 1985 payment on Governor Clinton's loan at Security Bank of Paragould in the amount of \$7,322.42.⁴⁵⁷

Findings:

Chart 13 depicts the findings. The following text helps explain the chart:

The analysis of this transaction is similar to the analysis of the Madison Marketing deposit into Whitewater of a year earlier. Here again, within several weeks of the disbursement at issue, Madison Marketing received many large deposits from related entities, including deposits from Madison Guaranty, Madison Financial and Whitener & Associates of \$89,294 on October 25, 1985⁴⁵⁸ and \$27,110 on October 29.⁴⁵⁹ Another deposit was received from

455(...continued)

455 SSB6

456 As discussed below, on one other occasion funds appear to have "passed" through Whitewater, although the evidence does not reveal why. See Part VIII.A below (discussing \$30,000 McDougal "bonus").

457 RTCKC0396; RTCKC0470; DKRT200776.

458 IC06632.

459 IC07427.

Campobello Properties for \$14,375 on October 30.⁴⁶⁰ By that date (October 30, 1985), Madison Marketing had an account balance of \$156,236.⁴⁶¹ Eight days later, on November 8, 1985, the Madison Marketing account balance dropped to \$23,837 after the \$7,500 disbursement to Whitewater.⁴⁶² The evidence thus far reviewed does not reveal the nature of these transactions between Madison Guaranty, Madison Financial and Madison Marketing.

C. Similar patterns in the McDougals' personal financial activity.

From this funds-tracing work, a pattern emerges. More and more, the McDougals lacked the money to pay their personal debts, so increasingly they transferred money between entities they owned or controlled to cover their obligations to third persons. While the focus here is Whitewater and the McDougals' other dealings have not been studied in great depth, the same pattern emerges with respect to some of their other dealings. Thus, from mid-1984 through mid-1985, the McDougals participated in a number of large transactions that transferred funds among McDougal-controlled entities and Madison Guaranty. Here are a few examples from the same time period as the nine transactions discussed immediately above:

Payment on the Worthen Bank debt, July 1984: As described above, McDougal had borrowed \$142,186.09 in June 1983 to acquire more Madison Guaranty stock.⁴⁶³ To pay Worthen in part,⁴⁶⁴ McDougal wrote check #323, for \$27,623.15, which was posted to the McDougals' joint account at Madison Guaranty on July 6, 1984.⁴⁶⁵ The payment would have caused an overdraft but for a \$34,000 deposit posted to the joint account the same day.⁴⁶⁶ The deposit came from Flowerwood Farms (\$31,500) and Tucker-Smith-McDougal

460 IC0,355.

461 IC00447.

462 IC00453.

463 Note #200679, WRTC00370. See Part V.A.2.a above.

464 The Madison Financial check database (CR0545) listed a June 27, 1984 check from McDougal to Worthen Bank, comprised of principal of \$10,000 and interest of \$17,623.15. A copy of the check was not available.

465 IC01232. In the pages the follow, frequent reference will be made to the McDougals' joint account at Madison Guaranty, #424. In the years 1984-86, hundreds of thousands of dollars flowed through this account.

466 IC01232.

(\$2,500).⁴⁶⁷ In turn, Flowerwood Farms had received a \$30,000 deposit just three days earlier, on July 3, 1984, from R. D. Randolph.⁴⁶⁸

Payment on the Union Bank debt, September 1984: Between October 1980 and February 1981, McDougal had borrowed \$396,500 from Union Bank to finance his Madison Bank stock purchases and a car.⁴⁶⁹ As noted above, in February 1984, the McDougals had paid down the Union Bank loan by \$100,000 (\$143,217 with interest), by borrowing that sum in two loans from Madison Guaranty.⁴⁷⁰ On September 12, 1984, McDougal made a further payment on this loan by writing a check for \$51,165.83 on the McDougals' joint account at Madison Guaranty.⁴⁷¹ This reduced the outstanding balance of the Union Bank loan by \$30,000 to \$261,811.87; the remaining \$21,165.83 apparently was applied to accrued interest.⁴⁷² One day earlier, on September 11, 1984, a deposit was made to the McDougals' joint account in the amount of \$51,000 from an account at First Commercial Bank. The available evidence does not disclose the identity of the payer.⁴⁷³

Payment on Pulaski Bank & Trust Company debt, February 1985: The McDougals appeared to have borrowed \$175,000 from Pulaski Bank & Trust Company on December 31, 1984 for the purchase of a house.⁴⁷⁴ The loan was payable in 121 days on May 1, 1985, with interest accruing at 13.5 percent.⁴⁷⁵ It is not certain when the McDougals bought the house, but a Madison Guaranty residential loan application completed in February 1985 indicates that the McDougals purchased a house in 1985 for \$175,000.⁴⁷⁶

467 IC01169; IC01258; CR0532.

468 IC01169; CR0532. A \$30,000 check dated June 21, 1984 was posted against Randolph's West-Ark Construction account on July 5, 1984. Randolph doc. 044393; IC01161. Randolph doc. 044309. Randolph said this was another of his payments for Dogpatch Addition. Randolph Interview, Mar. 9, 1995, at 42:2-18. Also on June 21, 1984, West-Ark received a deposit for \$24,500. The source of this deposit is not known, but review of the Madison Financial check database suggests that Madison Financial was not the source.

469 WRTC00123; WRTC00125. See Part IV.B.3.b above.

470 WRTC00103; RTCKC6592; RTCKC11329. See Part VI.B above.

471 IC01215; IC14779.

472 WRTC00121.

473 IC01215; IC14658.

474 RTCKC19548-49; RTCKC6629.

475 RTCKC19548

476 RTCKC06629.

The McDougals obtained another \$360,000 loan from Madison Guaranty on February 22, 1985. The loan application described the use of proceeds as "remodel."⁴⁷⁷ The loan, bearing interest at 10.81 percent, was due in equal monthly installments of \$3,376.78 until April 5, 2000, when a balloon payment of \$303,616.58 was due.⁴⁷⁸ On February 22, 1985, Madison Guaranty cashier's check #2218, for \$351,502.80, was issued payable to James B. McDougal.⁴⁷⁹ The cashier's check was deposited in the McDougals' joint account the same day.⁴⁸⁰ Three days later, McDougal used check #615 from this account, for \$178,301.02, to pay off the Pulaski Bank loan.⁴⁸¹

The McDougals also used the proceeds of the remodeling loan to pay off five earlier Madison Guaranty loans on February 22, 1985, with combined outstanding balances of \$90,000 (\$95,562.62 with interest):⁴⁸²

#1149	\$5,000 (\$5,313.58), originated March 9, 1983; ⁴⁸³
#5401	\$5,000 (\$5,342.73), originated August 1, 1983; ⁴⁸⁴
#5827	\$8,000 (\$8,163.45), originated December 29, 1983; ⁴⁸⁵
#5902	\$13,000 (\$13,815.04), originated January 31, 1984; ⁴⁸⁶
#1592	\$59,000 (\$62,927.82), originated February 24, 1984. ⁴⁸⁷

477 RTCKC06629.

478 RTCKC17259.

479 IC24145; RTCKC17394. The \$8,497 difference between the loan amount and the net proceeds disbursed was a loan fee (\$7,200) and "advance interest" (\$1,297).

480 IC02150.

481 IC02150; IC24129; IC24130. On the check, "Pulaski Bank" was crossed out and "Madison Bank" was written in. The check was stamped on the back by Madison Guaranty. The memo line on the check (which is difficult to read) appears to read "Pulaski Bank Payoff #4 Betswood Mortgage."

482 IC02150; IC23855.

483 RTCKC6558

484 RTCKC6575

485 RTCKC6578

486 RTCKC6581

487 RTCKC6601.

These loan repayments account for all but \$77,639 of the remodeling loan proceeds. At the end of February, the McDougals had a \$69,102 balance in their Madison Guaranty checking account.⁴⁸⁸

The remodeling loan never was repaid. The RTC filed a proof of claim against Jim McDougal's bankruptcy estate on January 29, 1992, listing this loan with \$360,381.85 of outstanding principal.⁴⁸⁹ The RTC also obtained a judgment against Susan McDougal for the outstanding amount. This judgment has been transferred to a joint venture in which the RTC has an interest.

Another payment on the Union Bank debt, April 1985: As noted, in February 1984, McDougal had taken out two Madison Guaranty loans (#1591 and #1592) to fund a principal reduction on the \$396,000 Union Bank loan dating from 1980-81 that McDougal had used to buy Madison Bank stock and a car. By April 1985, loan #1591 was overdue. On April 19, 1985, check #196 for \$86,612.68 was posted against Flowerwood Farms' Madison Guaranty bank account, creating a \$50,919.18 overdraft by the end of that business day.⁴⁹⁰ The notation on the check is "Loan #1591."⁴⁹¹ A Madison Guaranty loan payment history confirms that, on April 17, 1985, \$86,612.68 was posted to McDougal's loan #1591, retiring the loan.⁴⁹²

Flowerwood Farms' overdraft was cured with a \$55,000 deposit posted on April 22, 1985 and received from funds drawn on the McDougals' joint account.⁴⁹³ The next day, this check (#699) was posted against the McDougals' joint account. After posting this payment, the account was overdrawn by \$28,077.82.⁴⁹⁴ The account remained overdrawn until May 1, 1985, when a \$29,209.30 deposit was received.⁴⁹⁵

488 IC002150.

489 PIMS0583, 87 (reference not found on document, but falls into logical sequence).

490 IC00969; IC32290. Earlier, on April 3, 1985, Flowerwood Farms received a \$135,000 deposit from proceeds of a loan from Stephens Security Bank, increasing the account balance to \$136,550.91. As discussed above, among other items funded by this deposit was a \$24,455.90 payment to Whitewater posted to the account on April 9, 1985. IC00969; IC32803.

491 IC39377.

492 RTCKC6569; RTCKC6585.

493 IC00969; IC39431; IC39610.

494 IC00980.

495 IC02498. The Madison Financial check database reveals that the deposit was from "Execucar." CR0585-586. A check was written on the McDougals' account to Execucar for an identical amount earlier on April 22, 1985. IC39500.

Another payment on the Union Bank debt, May 1985: On May 24, 1985, Jim McDougal obtained an \$85,000 unsecured loan from Madison Guaranty. It was posted to the McDougals' joint account on May 28, 1985.⁴⁹⁶ The loan was scheduled to mature on November 24, 1985 and bore interest at 10.31 percent. On May 24, 1985, a check (#760) on the joint account for \$83,233.29 was written to Union Bank.⁴⁹⁷ The payment reduced the outstanding balance of the Union Bank loan from \$261,811.87 to \$200,000.⁴⁹⁸

Jim McDougal may have repaid Union Bank in part, but he never paid more than a minimal sum to Madison Guaranty. According to a loan payment history, on May 23, 1986 a \$2,000 principal payment was made, reducing the loan balance to \$83,000.⁴⁹⁹ The balance of the loan and interest due had not been paid as of January 29, 1992, the date of the RTC's proof of loss filing in Jim McDougal's bankruptcy proceeding.⁵⁰⁰

Another payment on the Worthen Bank debt, June 1985: Jim McDougal executed an extension agreement for his loan at Worthen Bank on June 20, 1985. (This was the loan that financed some Madison Guaranty stock.) The extension agreement indicates a \$30,105 payment (\$13,250 for principal and \$16,855.11 for interest) was made in connection with this renewal.⁵⁰¹ The payment was drawn on the McDougals' joint account.⁵⁰²

496 IC02500; RTCKC6654.

497 IC33892, 93. The transaction detail is partially obscured on the microfilm. However, a letter from Jim McDougal to Union Bank on May 24, 1985 states, "Enclosed is my check for \$83,233.29 for payment on note #1508331. This is a principal reduction of \$61,811.87 and an interest payment of \$21,421.42." WRTC00169.

498 WRTC00121. In a credit file memo dated May 17, 1985, Bill Staed of Union Bank comments:

Within the next few days, McDougal will pay the interest current on his loan, which has a principal balance of approximately \$260,000, and will also reduce that outstanding principal balance to \$200,000. He will of course need an extension of the balance. Our bank has extended a commitment to John Latham, who is Chairman of Madison Guaranty Savings & Loan here in Little Rock for \$100,000, with which to purchase the Smiths' interest in the Madison Bank & Trust. I extended this commitment a month or so ago, but the sale of the stock from the Smiths' to Latham has not yet taken place since the regulatory approval, apparently from FDIC, has not yet taken place If the sale of the stock to Latham is not approved by the regulators, we will have to go back to the drawing board and determine what our course of action will be.

WRTC00124.

499 RTCKC6572.

500 PMS0583, 87 (not on document, but in sequence).

501 WRTC00368.

D. Testimony about the McDougals' handling of funds.

These transactions, like the transactions related to Whitewater described in the previous section, reflect a consistent approach to funding shortfalls in obligations of the McDougals and McDougal-controlled entities. As shown, the McDougals often moved funds to prevent, or cure, overdrafts. Nevertheless, many overdrafts occurred, if only for a few days, and thus would show up on the books. Some of these overdrafts were conspicuously large. At his criminal trial in 1990, Jim McDougal was asked about the biggest of the overdrafts, the Madison Financial overdraft, which ultimately grew to over \$2 million before being converted into an investment.⁵⁰³ McDougal testified:

Q. The company. Madison Financial was overdrawn in its bank account quite regularly, wasn't it?

A. I don't know, I'm not the bookkeeper.⁵⁰⁴

He was then shown a document that he had signed, converting the overdraft to a promissory note.

Q. So, it was brought to your attention from time to time about the overdraft position of Madison Financial?

A. Yes, sir, apparently.⁵⁰⁵

Steve Cuffman was an attorney who became chairman of Madison Guaranty when Jim McDougal was removed in July 1986. In an interview conducted in 1994, Cuffman described Madison Financial's overdrafts as follows:

Q: . . . What about overdrafts of the service corporation?

A: They occurred regularly.

Q: Do you know if the service corporation's account was in overdraft most of the time that you were on the board?

502(...continued)

502 IC35194 (partially obscured). The McDougals' statement for account #424 was not available for the month of June 1985.

503 CR0077.

504 McDougal R.T. 980.

505 McDougal R.T. 982-83.

Q: Do you know if the service corporation's account was in overdraft most of the time that you were on the board?

A: I don't know if it was. I don't know when I was a board member until I got into the position to know, that that was occurring. It was apparently a regular practice. It was like a relationship I have with my bank. I write a check knowing it's going to overdraft my account and the bank will cover it and then they send me a notice and I pay them \$18.50 [sic] for the privilege. It was the same thing at Madison except the scale was enormously bigger and there was no \$18.50 charge.⁵⁰⁶

Tommy Trantham became president of Madison Guaranty in the spring of 1987. He has worked for various banks since the mid-1970s and spent the mid-1980s working for the Federal Home Loan Bank, first in Little Rock and later in Dallas.⁵⁰⁷ In an interview conducted in 1994, he was asked what he found wrong when he became president of Madison Guaranty:

Q: Well, beyond write-downs that hadn't been recognized, was there anything else inherently flawed in the type of reporting system or computer accounting systems that you found there?

A: I don't think, as far as your systems, I know the thing that really blew my mind is the overdraft situation. You know, there was, it's just like the service corporation would write a check, you know, and it just didn't make any difference if any money was in there or not. And instead of advancing, like, you know, going through with a formal loan document, you know, they just left it, you know, out in limbo as an overdraft situation. And that was one of the things that we had to write off. I can't remember the exact number, but it was in excess of a million dollars.

Q: Then under the "cease and desist" you had to curtail all overdrafts?

A: Right, right.⁵⁰⁸

506 Cuffman Interview, Apr. 26, 1994, tape 2, at 44.

507 Trantham Interview, tape 1, at 3. Madison Guaranty was operating under a cease and desist order at the time, so Trantham's appointment had at least the FHLBB's tacit approval.

508 Trantham Interview, tape 2, at 1-2. The cease and desist was not imposed until the middle of 1986. PMS0370. Until that time, many overdrafts took place.

Sue Strayhorn was Jim McDougal's secretary in 1985 and 1986. In an interview conducted in 1994, she was asked how McDougal came to overdraw so many accounts at Madison Guaranty, and whether she knew it at the time. She answered:

Um, I'm not, I don't know if I was aware of it at that point. Uh, Jim McDougal was the kind of guy that if he found a check in his desk drawer, you know, he's been known to write a check on an account that'd been closed for three years. You know, it didn't make any difference if it came back without paying.⁵⁰⁹

VIII. INVESTIGATION OF OTHER POSSIBLE CONNECTIONS BETWEEN MADISON GUARANTY AND WHITEWATER.

This part of the report focuses on three events: (1) the "bonus" paid to Jim McDougal, which was deposited into the Whitewater account before it was transferred to Senator Fulbright; (2) campaign contributions made to the Clinton gubernatorial campaign by people associated with Madison Guaranty; and (3) the David Hale loan.

A. The McDougal bonus and the payments to Senator Fulbright.

Minutes of the board of directors of Madison Financial Corporation dated April 1985 state that the board voted to give Jim McDougal a \$30,000 bonus, payable to the Whitewater Development Company. As described below, however, the minutes are suspect and contradictory.

Madison Financial did deposit \$30,000 into the Whitewater account on May 1, 1985.⁵¹⁰ It covered an overdraft created by a \$30,000 payment by Whitewater to a newly created McDougal-controlled entity, Earth Movers, Inc., and indirectly to Senator Fulbright. In February 1986, John Latham, then Madison Guaranty's president, directed that the 1985 minutes be re-written to increase the amount of the bonus to \$50,000 and to eliminate the reference to Whitewater. In fact, \$30,000 rather than \$50,000 actually was transferred by Madison Guaranty into the Whitewater account, while Senator Fulbright received \$30,000 from Earth Movers, Inc. in April 1985 and another \$20,000 from McDougal in May 1985.

509 Strayhorn Interview, Apr. 1994, at 80

510 DKRT100084; DKRT101144; CR0264.

1. The Deltic parcel.

In 1975, Senator Fulbright purchased slightly more than 500 acres in West Little Rock from a company called Deltic.⁵¹¹ Witt Stephens (an investment banker associated with Stephens Inc.) was a principal in Deltic. The Stephens brothers (Witt and Jack) and Senator Fulbright had a close relationship. Fulbright was on the board of directors of Stephens Inc. for many years. Later, Stephens personally loaned Fulbright approximately \$240,000 so that Fulbright could pay back his loan on approximately 486 acres of Castle Grande that Fulbright purchased from Madison Financial in December 1986.⁵¹²

Fulbright held the West Little Rock property until 1985. In January 1985, McDougal examined the Stephens' adjoining parcel for Jack Stephens. McDougal reported that the upland portions of the property lacked well water and would be valuable only if a central water system were installed and hooked to a neighboring system a mile and one-half away. McDougal recommended bringing the water line through Senator Fulbright's property and an adjoining parcel owned by Deltic Timber. McDougal says that "Senator Fulbright has preliminarily indicated that he would be willing to trade other property he owns in Pulaski County to Deltic for the property [that Deltic Timber owns] in section 13." McDougal then proposed that Madison Guaranty's service corporation handle the marketing of the entire 1,500 acres of property.⁵¹³

The transaction with Senator Fulbright was not handled as an exchange but as a sale in four pieces. In January 1985, the first parcel (of four) was sold: 40 acres to a Dr. Gold. Dr. Gold executed a \$70,000 note in favor of Senator Fulbright. This note was ultimately assigned to Madison Financial as part of the down payment for Senator Fulbright's purchase of a portion of the Castle Grande property from Madison Financial.⁵¹⁴ In March and April 1985, McDougal arranged for a company called Earth Movers, Inc. to buy a second

511 Fulbright doc. 001261.

512 Fulbright doc. 001932, 001917, 001934, 001942, 001946. Fulbright also "closed out" a securities account at Stephens Co. for the other part of the money used to pay off the Madison Guaranty mortgage. Fulbright doc. 001265. As noted, Castle Grande is another real estate development financed by Madison Guaranty. It is described in another report.

513 Fulbright doc. 001125.

514 Fulbright doc. 001541, 001962, 001960.

40 acre parcel from Senator Fulbright.⁵¹⁵ Senator Fulbright then sold the third and fourth parcels in July 1985 and April 1986.⁵¹⁶

Of the four conveyances, only the second, to Earth Movers, has any relationship to Whitewater and thus only it needs to be discussed in any detail. McDougal had incorporated Earth Movers on March 25, 1985; Jim Guy Tucker is shown as the agent for service of process; Eugene Patrick "Pat" Harris was the president.⁵¹⁷ The company had a short life; the Arkansas Secretary of State revoked its corporate charter on October 15, 1985 for failure to pay its franchise taxes.⁵¹⁸

The available evidence reveals little about why Earth Movers was created. Pat Harris has provided the only available explanation:

Q. Now, Mr. Harris, you -- are you familiar with a corporation called Earth Movers, Incorporated?

A. Yes.

Q. And what was Earth Movers?

A. Earth Movers was--I don't recall the year. I guess it was '84, '85, whenever it was. Jim McDougal came and asked me -- he had had previous conversations with me about we need to get out of the savings and loan and go out and get back to the good old days of just buying real estate and selling it, blah, blah, blah.

515 Fulbright doc. 001274, 001261.

516 The third parcel, 80 acres, was sold to Larry and Elizabeth McCraw in July 1985 for \$155,960. Fulbright docs. 001274, 001276. The fourth parcel, 340 acres, was sold to "a group of young lawyers who intend to build nice houses on the property" in April 1986 for \$513,000. *Id.* 001507, 001515. The principal lawyer was Larry Kuca, who had worked with McDougal on the Campobello project and served for a time as president of Madison Financial. Kuca paid \$40,000 as a down payment and executed a note for \$473,000 in favor of Senator Fulbright. *Id.* 001277, 001512-19. The sale was set up so that Kuca's payments on his note to Fulbright would service Fulbright's Castle Grande loan. On July 2, 1986, Senator Fulbright paid down his \$700,000 Madison Guaranty note for his Castle Grande investment so that it roughly equaled the amount Kuca owed to Fulbright. *Id.* 001277, 001511.

517 Incorporation was confirmed by the Arkansas Secretary of State. Pat Harris' status is confirmed by a letter he wrote in May 1986. Pat Harris now lives with Susan McDougal in Nashville, where he practices law.

518 Lorene McDougal's answer to request for admission no. 12, filed Nov. 8, 1988 in *Meux v. Earth Movers, Inc.*, Pulaski County Chancery Court No. 88-2309 (hereinafter, "*Meux*"). MEUX055. The Secretary of State also confirmed this. The Chancery Court's decree, entered in 1989, said: "Earth Movers, Inc. is defunct, insolvent and incapable of rendering specific performance" MEUX005.

And on one specific day he -- we had a fairly lengthy -- may have been over lunch or something, we had a fairly lengthy conversation about going out and doing projects, buying acreage and just cutting them up and not doing all the advertising and not going -- just putting the ads back in the paper. And doing what he called basically the old way he used to do it before he got involved with Madison.

And the next day after the conversation he came, with the corporation papers, the Earth Movers, Inc. Had me listed as the president and Jim Guy Tucker listed as the agent for service. And said this was the vehicle -- you know, we were going to get out and this is the vehicle we're going to do it with. Saying, you know, somewhere down the road we'll find a piece of land and we'll do it in Earth Movers. And that was basically the last I heard of it. I signed the incorporation papers. Didn't think too much more about it. . . .⁵¹⁹

. . .

Q. And what, when you were presented with these documents, you were presented with them by Jim McDougal?

A. Uh-huh.

Q. Was it your understanding at that time that you were incorporating an operating corporation?

A. Yes.

Q. And did you have any concept or idea how it would operate?

A. No. There was no discussion how it would operate.⁵²⁰

. . .

Q. Now, you went ahead and signed it [the incorporation papers].

A. Yes.

Q. Why?

A. Can't answer that question. I mean, I don't know. I trusted Jim. I mean, that's the best answer I can give you. I always trusted Jim. He

519 Pat Harris Deposition, Feb. 17, 1995, at 78:19-79:23.

520 *Id.* at 82:13-23.

had never lied to me. He had never done anything to hurt me or--I mean, I never believed he would do anything to harm me.⁵²¹

Within a few weeks of its creation, Earth Movers bought the second Deltic parcel from Senator Fulbright. Pat Harris says he knew nothing of this until much later, perhaps a year later.⁵²² The available evidence does not reveal why Earth Movers bought this parcel from Senator Fulbright, or how the parties agreed upon the price.⁵²³ In any event, the sale of the parcel resulted in net proceeds to Senator Fulbright of \$50,000.⁵²⁴

2. The funds used to pay Senator Fulbright.

The proceeds were paid to Senator Fulbright in two installments. The first installment, \$30,000, came indirectly from Whitewater's checking account at Madison Guaranty.⁵²⁵ At the time, the Whitewater account had a balance of only \$255.13, so the \$30,000 check created an overdraft of (\$29,744.87).⁵²⁶ The overdraft was cured several weeks later, when Madison Financial deposited \$30,000 into the Whitewater account.⁵²⁷ The next section below discusses the contradictory documentary evidence as to the rationale for the deposit; this section traces the funds.

Whitewater check no. 138, in the amount of \$30,000, was made payable to Jim McDougal.⁵²⁸ McDougal endorsed the check to Earth Movers, and

521 *Id.* at 83:23-84:6. Pat Harris had started out as a worker in McDougal's 1982 campaign for Congress. Although he "knew nothing or very little about real estate," McDougal kept Harris on and sent him to real estate school. Harris ended up spending most of the years 1983-1986 working for Madison Financial, chiefly as a real estate salesman. *Id.* at 6:8-7:8, 9:20-15:24.

522 *Id.* at 79:23-81:23. Harris concedes that he may have signed documents pertaining to the transaction. *Id.* He says he recalls nothing about the transaction, why it occurred or who financed it. *Id.* at 85:22-86:15, 88:10-89:8.

523 This parcel was landlocked. Fulbright doc. 001337. Madison Financial provided Senator Fulbright an easement that allowed a road to be built, creating access to the land.

524 See Fulbright doc. 001261. Senator Fulbright applied most of the proceeds from the sales of the four parcels to his purchase of a portion of the Castle Grande property from Madison Financial in 1986.

525 DKRT101154-55. Senator Fulbright's lawyer, David Capes of St. Louis, Missouri, confirmed this in an interview. See Chart 14 for a depiction of the flow of funds.

526 DKRT101156. The \$255.13 balance is net of a \$15.00 overdraft charge posted the same day.

527 CR0264; DKRT100084.

528 DKRT101154.

Earth Movers endorsed the check to Madison Guaranty to buy a cashier's check (no. 02577, account 7-001-312), which was made payable to Senator Fulbright.⁵²⁹ The check was mailed to Senator Fulbright under cover of a letter from McDougal:

Enclosed is a check for \$30,000 from the sale of the 40 acres. This represents the remaining profits from the sale of the land-locked 40 acre tract after we have paid for the easement to the Garrison Road property.

This makes your profits to date on the sale from the Deltic block \$158,000. Your cost basis is \$105,000 on the entire block.⁵³⁰

The letter makes no mention of a second installment. Nonetheless, a second installment, \$20,000, was paid on May 15, 1985, again by a cashier's check from Madison Guaranty (no. 02704, account 7-001-312).⁵³¹ The \$20,000 came from McDougal's personal account; there is no evidence that the \$20,000 was connected to Whitewater.⁵³² McDougal hand-delivered this second check to Senator Fulbright in Washington.⁵³³

3. Madison Financial's inconsistent documentation of the McDougal bonus.

This entire transaction seems to have little to do with Whitewater except that the first installment of money paid by McDougal to Senator Fulbright came from the Whitewater account, creating an overdraft in that account, and was covered by a payment from Madison Financial to Whitewater. In Madison Financial's files, several inconsistent versions of board minutes were found describing the payment from Madison Financial to Whitewater.

Generally speaking, the board meetings of Madison Financial were, at best, informal; one director did not even know he was a director.⁵³⁴ The

529 DKRT101155; IC11945-46; IC28622-23.

530 Fulbright doc. 001337.

531 IC29958-59.

532 Check 748, IC30027; IC02499. Jim McDougal obtained a \$20,000 loan from Madison Guaranty on the same day. The stated purpose of the loan was to "purchase furniture." RTCKC06611-13.

533 Fulbright doc. 001261.

534 Strayhorn Interview at 29.

board's minutes for 1985 were created early in 1986, shortly before the FHLBB examiners arrived for the examination that started March 4, 1986.⁵³⁵

Drafts of the 1985 Madison Financial board minutes appear to have been circulated among management around January 1986.⁵³⁶ Those drafts contain references to a \$20,000 bonus awarded to McDougal on February 7, 1985 and a \$30,000 bonus awarded to McDougal on April 17, 1985.⁵³⁷ The minutes indicate that the April 17, 1985 bonus was "to be paid directly to Whitewater Development." A \$30,000 check was in fact issued by Madison Financial directly to Whitewater shortly after the April meeting.⁵³⁸

It is not clear whether these board minutes reflect actual board decisions awarding McDougal bonuses, or whether the minutes were fabricated after the fact to coincide with draws actually made by McDougal out of the corporation's funds at roughly those times. One memorandum from John Latham to Sue Strayhorn, dated April 17, 1985, stating that a \$30,000 bonus to McDougal needed to be entered in the minutes, supports the theory that, at a minimum, the decision to include the April 17 resolution in the minutes occurred on or about that date.⁵³⁹ On the other hand, that memorandum also could have been created after the fact and then backdated.⁵⁴⁰

In any event, the records reflect that, in February 1986, days before the examiners arrived,⁵⁴¹ management attempted to delete the April 17, 1985 board resolution awarding McDougal a \$30,000 bonus and to increase his February 7, 1985 bonus by the same amount. Attached to one draft of the April 17, 1985 board minutes is a note dated "2/28" (presumably 1986), indicating that John Latham had called from Colorado, that Latham was aware that

535 McDougal R.T. 986-88; Strayhorn Interview at 25-26, 133. This applies only to Madison Financial minutes, not Madison Guaranty minutes. Strayhorn Interview at 28.

536 RTCKC37407-32.

537 *Id.*

538 CR0264.

539 RTCKC37507.

540 The records reflect confusion among management as to when and how much McDougal was paid. A notation on one document asks whether McDougal received both a \$20,000 bonus and a \$30,000 bonus in 1985. RTCKC37421. Notations on two other documents suggest that someone thought McDougal received the \$20,000 on April 4, 1985. RTCKC33957. See also RTCKC37421. May 4, coincidentally, was the date of the Clinton fund-raiser. It was five weeks before McDougal's payment, on May 15, 1985, of \$20,000 to Senator Fulbright. As discussed above, the payment to Senator Fulbright actually was funded by a loan to "purchase furniture" made on May 15, 1985. RTCKC06611-13.

541 The examination started on March 4, 1986.

the examiners "were coming," and that someone was to "delete the \$30,000 bonus" and "modify [the \$20,000] resolution to say that the board voted to pay \$50,000 bonus to Jim due to high profits of last 2 years."⁵⁴²

In accordance with that note, Madison Financial's records contain a version of the February 7, 1985 minutes that awards McDougal a \$50,000 bonus (increased by \$30,000 from the January 1986 draft of the 1985 minutes). An attached note says, "revised 2-28-86 SS" (the initials presumably being those of Sue Strayhorn).⁵⁴³ The records also contain a version of the April 17, 1985 minutes bearing a handwritten note, "included in Feb 7 minutes"; presumably this refers to the \$30,000 bonus.⁵⁴⁴

Although the February 1985 minutes were altered, it appears that management never deleted the \$30,000 bonus from the April 17, 1985 minutes. All versions of the April minutes examined make reference to the \$30,000 bonus. The documents and interviews do not provide a conclusive answer as to why Latham, or anyone, would have sought to re-write the February and April 1985 minutes in February 1986 or to have eliminated the reference to Whitewater.⁵⁴⁵ In any event, both versions of the minutes remained in the files, as did Sue Strayhorn's notes and the checks documenting the transaction.

4. Aftermath of the transaction.

In May and June 1986, Earth Movers split the parcel into two pieces and sold the pieces to Ed and Shirley Meux and A. D. Chavis, III for \$95,000. The two buyers paid a total of \$20,000 down and gave notes for the remaining \$75,000. As a condition of the sales, Earth Movers agreed to construct an access road to the parcels.⁵⁴⁶ Jim McDougal caused the two notes to be assigned to his mother, Lorene McDougal.⁵⁴⁷ Earth Movers did not construct

542 RTCKC37432.

543 RTCKC Investigations box I-002.

544 *Id.*

545 RTC has been negotiating with the Independent Counsel for months for their consent to interview Latham; the interview has not occurred yet.

546 MEUX085-87 Chavis, in an affidavit dated October 27, 1988, states that on June 28, 1985 he bought 18.44 acres for \$50,000, or \$2,711.50 an acre, and that Earth Movers two months before that had paid \$750 an acre, or \$13,830, for the same tract. He does not complain about the increase in price but attributes it to the access road that Earth Movers had promised to build within 90 days of the sale. MEUX064-65.

547 MEUX005; MEUX055-56; MEUX065; MEUX086. Answer to request for admission no. 10 filed by Lorene McDougal in *Meux*. It appears that Lorene McDougal paid for the assign-

(continued...)

an adequate access road, so in 1988 the Meux and Chavis sued.⁵⁴⁸ Earth Movers defaulted, and Chavis ultimately obtained a decree against Lorene McDougal. The decree holds that Lorene McDougal was not a holder in due course of the Chavis note.⁵⁴⁹

To summarize, the evidence suggests that the Deltic/Earth Movers transaction had no substantial relationship to Whitewater. Instead, it appears that \$30,000 flowed through the Whitewater account for reasons that appear unrelated to Whitewater, much as funds destined for Whitewater sometimes flowed through the accounts of other McDougal-controlled entities for reasons seemingly unrelated to those entities. Also, nothing seen to date suggests that Senator Fulbright or the Clintons had any knowledge that the \$30,000 that Senator Fulbright eventually received had any relationship to Whitewater, Madison Financial or Madison Guaranty.

B. Contributions to the Clinton campaign.

On April 4, 1985, Jim McDougal hosted a fund-raiser for Bill Clinton at Madison Guaranty's offices in Little Rock.⁵⁵⁰ The event does not seem to have been planned far in advance; as late as March 26, 1985, the date had not been confirmed.⁵⁵¹

It has been suggested that Jim McDougal and Charles Peacock III conspired to misappropriate thrift funds from Madison Guaranty to make illegal campaign contributions to Governor Clinton.⁵⁵² This section of the report examines that suggestion.⁵⁵³ At issue are six groups of contributions (or alleged contributions) totaling \$23,500: Jim and Susan McDougal, \$3,000; Charles Peacock III, \$6,000; Senator Fulbright, \$3,000; Chris Wade, \$2,000;

547(...continued)

ment. See cashier's check no. Q4550, dated February 27, 1986, to Earth Movers, Inc. from Lorene McDougal for \$61,000. Plaintiff Chavis, in his affidavit, states that "Lorene McDougal testified that she purchased my note and co-plaintiffs' note for \$14,000 less than their face amount." MEUX065.

548 MEUX064-65; MEUX085-87.

549 MEUX005-6.

550 *Arkansas Democrat Gazette*, May 31, 1994.

551 A memorandum to Governor Clinton dated March 26, 1985 reports on a call from McDougal: "Wants you to come b[y] for 30 minutes on either April 3 or April 4 for a fund-raiser for you. He said it has to be one of those dates because that is when Fulbright can come." DKRT800557A.

552 CR0720.

553 The findings are summarized in Chart 15.

Lorene and Susan McDougal, \$7,500; and Bill and Jim Henley, \$2,000. After a short summary of the applicable law, each is discussed in turn below.

In 1985, campaign contributions made to state or local candidates in Arkansas were regulated by Chapter 11, Political Practices Act - Offenses and Penalties, of the Arkansas Elections Code.⁵⁵⁴ Under this act, individual contributions to a candidate were limited to \$1,500 per candidate per election.⁵⁵⁵ Consequently, contributions from couples were limited to \$3,000 per candidate per election. The primary, special and general elections were considered separate elections for purposes of the contribution limits.⁵⁵⁶

Cash contributions exceeding \$100 were prohibited, and contributions exceeding \$100 were required to be made by a written instrument containing the names of the donor and the donee.⁵⁵⁷

The act prohibited the following contributions: (1) campaign contributions in support of or in opposition to a candidate other than directly to the candidate or to the candidate's committee; (2) contributions by any person in a name other than the name by which the person is identified for legal purposes; and (3) anonymous contributions totaling \$50 or more in a calendar year.⁵⁵⁸

1. The McDougals' \$3,000 contribution.

Check #688 for \$3,000 from the McDougals' joint account at Madison Guaranty, #424, was written to the Bill Clinton Campaign Fund on April 4, 1985.⁵⁵⁹ The check was endorsed to the Bill Clinton Political Committee and deposited in the Bill Clinton Political Committee account #11932 at the Bank of Cherry Valley on April 29, 1985.⁵⁶⁰

It has been suggested that the McDougals' joint account was overdrawn by \$7,897.73 at the time this check was written.⁵⁶¹ But the bank statement

554 Ark. Code Ann. § 3-1101 *et seq.*

555 Ark. Code Ann. § 3-1110.

556 Ark. Code Ann. § 3-1109(E).

557 Ark. Code Ann. § 3-1116.

558 Ark. Code Ann. § 3-1117.

559 IC29787-88.

560 IC29788; BW020-026; BW002.

561 CR0718-19.

indicates that the balance at the end of the day on April 3, 1985 was \$32,878.97.⁵⁶²

The check cleared on May 3, 1985. The account was overdrawn at the end of the day on May 2 by \$5,753.85. After six checks, including #688, cleared on May 3, the account was overdrawn by \$10,897.73. However, a deposit of \$2,231.90 (from Madison Financial Corp.) was also made to the McDougals' account on May 3, leaving the account overdrawn at the end of the day by \$8,665.83, rather than \$10,897.73.⁵⁶³ Although it has been suggested that this force payment was made on McDougal's authority,⁵⁶⁴ no document has been discovered that shows McDougal approved this force payment.

The McDougals' account remained overdrawn until May 9, 1985.⁵⁶⁵ But on May 6, a deposit of \$8,000 cleared the account, significantly reducing the overdraft.⁵⁶⁶ Documentation for this deposit has not been located. The Madison Financial check database identified it as a deposit made on Friday, May 3 of a property damage payment from Southern Farms Insurance.⁵⁶⁷ If this deposit had cleared on May 3 instead of May 6, the overdraft would have been less than \$1,000 when the campaign contribution check cleared.

In any event, on May 9, 1985, three days later, two deposits amounting to \$6,000 were made into the McDougals' account, fully curing the overdraft.⁵⁶⁸

2. Ken Peacock's and Dene Landrum's contributions of \$3,000 each.

Ken Peacock (son of Charles Peacock III) and Dene Landrum were the remitters on cashier's checks #Q2497 and #Q2498, respectively, for \$3,000 each. These checks were dated April 4, 1985 and were payable to Bill

562 IC00979.

563 IC02498; CR0719.

564 CR0719.

565 IC02499.

566 IC02498.

567 CR0537.

568 IC02499. No transactional detail is available. The Madison Financial check database indicates that one of the deposits, for \$718.75, was from PC Hardware and Machinery. The nature of that transaction is not known.

Clinton.⁵⁶⁹ The checks were endorsed to the Bill Clinton Political Committee and deposited in the Bill Clinton Political Committee account #11932 at the Bank of Cherry Valley on April 29, 1985.⁵⁷⁰

It has been suggested that these cashier's checks were purchased with funds from Charles Peacock III and that Peacock III "misappropriated" this \$6,000 from a \$50,000 loan he obtained from Madison Guaranty on April 4-5, 1985.⁵⁷¹ This section examines two issues: (a) whether Peacock III funded the campaign contributions and, if so, (b) whether he did so with proceeds of a Madison Guaranty loan.

(a) The first issue is whether Charles Peacock III funded the contributions. A review of the available documentation for Ken Peacock's accounts at Madison Guaranty did not reveal any outgoing \$3,000 checks that could have been used to purchase a cashier's check. However, notably, April 1985 bank statements were not available for review. The documents needed for Landrum's bank accounts to conduct a similar review have not been located.

A \$6,000 counter check was written on April 4, 1985 from Charles Peacock III's account #15253 at Madison Guaranty. The check was payable to Madison Guaranty.⁵⁷² Charles Peacock III's check was not endorsed but was encoded with "7001312" which appears to indicate it was deposited in the Madison Guaranty cashier's check account #7001312.⁵⁷³ The Charles Peacock III bank statement for April 1985 could not be found.⁵⁷⁴ Accordingly, the date the \$6,000 check cleared has not been determined.

A review of the available Madison Guaranty cashier's checks issued in April 1985 did not reveal any \$6,000 checks with Charles Peacock III himself as the remitter. Moreover, the April 1985 bank statement for the cashier's check account did not include any deposits for \$6,000. These facts indicate that Peacock's \$6,000 check was not used to purchase one \$6,000 cashier's check.

The Madison Guaranty cashier's check account statement does show that three \$3,000 deposits were posted April 5, 1985.⁵⁷⁵ It appears that when

569 IC29885-86; IC29889-90; *Arkansas Democrat Gazette*, April 3, 1994.

570 BW020-26; BW002.

571 CR0718-19.

572 IC32564-65.

573 IC32565

574 As noted, the Independent Counsel has confirmed that not all statements exist.

575 IC11941.

cashier's checks were purchased, deposit slips were generated for each check amount. Therefore, Charles Peacock III's \$6,000 check to Madison Guaranty could have been recorded as two of these \$3,000 deposit items.

Madison Guaranty's records indicate that Charles Peacock III purchased a single cashier's check (#Q2499) on April 4, 1985. The check, for four dollars, was made payable to Madison Guaranty Savings & Loan.⁵⁷⁶ Generally, Madison Guaranty charged a fee of two dollars a check for cashier's checks. Therefore, Peacock's four dollar check could have been used to pay the fees for the two cashier's checks (#Q2497 and Q2498), although it is unclear why a cashier's check would have been used to pay so small an amount.

Based on this evidence, it is possible that Charles Peacock III purchased two \$3,000 cashier's checks with his \$6,000 check and then paid the fees using his four dollar cashier's check. Since the remitters on checks #Q2497 and #Q2498 were, respectively, the son and a business associate of Charles Peacock III, and since Peacock III's four dollar check follows their checks sequentially, it is possible that, of the three \$3,000 cashier's checks written that day, these two were purchased by Peacock III. Therefore, it is possible these contributions were made with Charles Peacock III's funds and without any monetary contribution by the recorded contributors.

Ken Peacock, the son of Charles Peacock III, has been quoted by a *Arkansas Democrat Gazette* article on April 3, 1994 as saying he never contributed to the Clinton campaign fund. A May 31, 1994 article from the same paper further reported that Ken Peacock did not attend the April 4, 1985 fund-raiser. In addition, the April 3, 1994 article stated that Charles Peacock III admitted to making the \$3,000 contribution in his son's name.

Dene Landrum was a business associate of Charles Peacock III in Quality Hydraulics.⁵⁷⁷ According to an April 3, 1994 *Arkansas Democrat Gazette* article, Landrum has since died, so his involvement with the contribution made in his name could not be verified.

Sue Strayhorn, Jim McDougal's secretary, provided the Governor's Office with the same address for both contributions. That address was c/o The Peacock Company, Rt. 2, Box 219, Bald Knob, Arkansas, which was Charles Peacock III's address.⁵⁷⁸

576 IC32730-31.

577 CR0757-58. His name was misspelled on the cashier's check as "Dean."

578 BW035.

(b) The second issue is the source of the funds for Peacock's \$6,000 counter check. This cannot be established from the available documentation. The April 1985 bank statement for Peacock's account #15253 was not available to determine whether any deposits were made immediately before the \$6,000 check was written. No April 1985 deposit slips for \$3,000 or \$6,000 were located for account #15253 or any other Peacock-related account. In addition, no deposits appeared on the March 1985 statement. The ending account balance on March 29, 1985 was \$6,547.25, which standing alone would have sufficed to make the two \$3,000 contributions.⁵⁷⁹ The beginning balance on the May 1985 statement was \$10,456.65, indicating that some deposits were made in April.⁵⁸⁰

It has been suggested that Charles Peacock III "misappropriated" this \$6,000 of campaign contributions from the proceeds of a \$50,000 loan he obtained from Madison Guaranty.⁵⁸¹ Peacock obtained loan #2354 for \$50,000 on April 5, 1985.⁵⁸² The promissory note stated the loan purpose was "business." The loan application indicated the purpose was "A/C Equipment."⁵⁸³ The loan was collateralized by commercial air conditioning equipment valued at approximately \$273,000.⁵⁸⁴ It has been suggested that this loan resulted in a \$48,500 loss to Madison Guaranty. The equipment was appraised at \$1,500 and sold as salvage in February 1990.⁵⁸⁵

It also has been suggested that the \$50,000 in loan proceeds from loan #2354 were intended to be used to make the down payment on the purchase of a lot or lots at Maple Creek Farms (based on "documents contained in the association's files"). It has been suggested that Peacock's company, Dixie Continental Leasing, had concurrently obtained loan #2406 from Madison Guaranty for \$297,000 to purchase 29.77 acres at Maple Creek Farms.⁵⁸⁶ As far as can be determined, Dixie Continental Leasing did not have an account at Madison Guaranty.

579 IC02208.

580 IC02537.

581 CR0719.

582 CR0761, 0718

583 CR0761-62.

584 CR0764-65.

585 CR0719.

586 CR0718.

Although the loan documents were signed on April 5, 1985, loan #2354 was funded via Madison Guaranty cashier's check #LN2461 on April 4, 1985.⁵⁸⁷ This \$50,000 was deposited in Charles Peacock III's account #15253 on April 5, 1985, according to the deposit slip.⁵⁸⁸ Even though the \$50,000 was deposited into the account after the \$6,000 check was written, these funds essentially replenished the account.

In turn, on April 5, 1985, Charles Peacock III wrote a check from account #15253 to Quapaw Title Company for \$38,940.⁵⁸⁹ It has been suggested that these funds were to be used for the down payment on the Maple Creek Farms property. According to a Peacock April 1987 deposition, however, these funds were "subsequently diverted" by Jim McDougal who made a down payment on the Castle Grande property.⁵⁹⁰ After the check to Quapaw Title, \$11,060 of the loan proceeds remained. No checks for this amount, or close to this amount, out of any Peacock accounts were located in the available documentation.

Therefore, while it is possible that a portion of this \$11,060 could have been used to reimburse Charles Peacock III for the campaign contributions he funded that were made in the names of Ken Peacock and Dene Landrum, that cannot be established from the documents alone.

3. The \$3,000 contribution in the name of Senator Fulbright.

The late Senator Fulbright was the remitter on Madison Guaranty's cashier's check #Q2496 for \$3,000. This check was dated April 4, 1985 and was payable to the Bill Clinton Campaign Fund.⁵⁹¹ The check was endorsed to the Bill Clinton Political Committee and deposited in the Bill Clinton Political Committee account #11932 at the Bank of Cherry Valley on April 29, 1985.⁵⁹²

The Fulbright cashier's check, #Q2496, falls numerically immediately before the three Peacock cashier's checks just discussed: #Q2497 for \$3,000 from Ken Peacock; #Q2498 for \$3,000 from Dene Landrum; and #Q2499 for

587 IC32740-41.

588 IC32538.

589 CR0768.

590 CR0718.

591 IC29883-84.

592 IC29884; BW020-026.

four dollars from Charles Peacock III.⁵⁹³ The Fulbright cashier's check was issued immediately before the Peacock checks.⁵⁹⁴

It has been suggested that Fulbright's cashier's check was purchased with funds from Flowerwood Farms.⁵⁹⁵ Check #192 was written from Flowerwood Farms' account #2301361 on April 4, 1985. The \$3,000 check was payable to Madison Guaranty.⁵⁹⁶ As discussed above, a \$135,000 deposit from Stephens Security Bank was made into this Flowerwood Farms account on April 3, 1985.⁵⁹⁷ Without this deposit, the account balance on April 3 would have been less than \$2,000.⁵⁹⁸

The Flowerwood Farms \$3,000 check was not endorsed but was encoded with "7001312" which appears to indicate it was deposited in the Madison Guaranty cashier's check account #7001312.⁵⁹⁹ The Flowerwood Farms check cleared on April 5, 1985.⁶⁰⁰ A \$3,000 deposit was posted in the cashier's check account #7001312 on the same day.⁶⁰¹

The apparent deposit of the Flowerwood Farms check into the cashier's check account indicates that it was used to purchase a cashier's check. However, the link between the Flowerwood Farms check and the specific cashier's check #Q2496 has not been conclusively confirmed. As noted, at least two other cashier's checks for \$3,000 were issued the same day (check #Q2497 from Ken Peacock and check #Q2498 from Dene Landrum). The Flowerwood Farms check could have been used to purchase any of these checks. Nevertheless, if the Ken Peacock and Dene Landrum cashier's checks were funded by Charles Peacock III, the Flowerwood Farms check could have funded the remaining \$3,000 cashier's check, the one from Fulbright.

593 IC29885-86; IC29889-90; IC32730-31.

594 IC29883-84.

595 CR0718.

596 IC32558-59; CR0344-45.

597 IC32290-91. This is the Stephens Security Bank loan discussed in Part VII.B.8 above and again in Part VIII.C below.

598 IC00969.

599 CR0345.

600 IC00969.

601 IC11941.

It has been suggested that Jim McDougal purchased cashier's check #Q2496 for Fulbright.⁶⁰² While no specific documentation has been located that substantiates this allegation, other evidence also suggests that someone other than Fulbright might have obtained the check, and McDougal might have been involved.⁶⁰³ Fulbright has reportedly stated that he did not contribute the money and he did not attend the April 4, 1985 fund-raiser at Madison Guaranty. Furthermore, Senator Fulbright's lawyer, David Capes, said he believes Fulbright had no knowledge of any such contribution.⁶⁰⁴ The circumstantial evidence supports these assertions⁶⁰⁵. Senator Fulbright was a meticulous record-keeper who kept detailed handwritten records of his expenses and gifts. He produced a summary of gifts for 1985 to the RTC. No such contribution appears in this summary of gifts. Senator Fulbright could not be interviewed because he suffered an incapacitating stroke several years ago. He died on February 9, 1995.

4. Chris Wade's \$2,000 contribution.

On February 15, 1985, Whitewater Development Company issued check #132 for \$3,000 to Chris Wade. The check was signed by James B. McDougal.⁶⁰⁶ It has been suggested however, that the signature appears to resemble that of Susan McDougal.⁶⁰⁷ The check was endorsed "for deposit only" to account #9628-06 and stamped to be paid to American Savings & Loan in Yellville, Arkansas.⁶⁰⁸ Chris Wade had an account #9628-06 at American Savings of Yellville, now known as Arkansas Federal Savings Bank.⁶⁰⁹

It has been suggested that this \$3,000 Whitewater check to Wade was part of a potentially illegal campaign contribution. This allegation appears to be

602 CR0718.

603 See also CR0718, which suggests that McDougal admits "signing documents" for Fulbright for "twenty years." This admission was made in an interview in late 1986.

604 Capes Interview Summary, July 9, 1994, at 1-2.

605 Apart from discussions with David Capes and the second R. D. Randolph interview, we have conducted no interviews on the subject of campaign contributions.

606 DKRT501060-61. This is the \$3,000 payment discussed in Parts VI.E and VII.B.7 above.

607 CR0722.

608 DKRT501061.

609 BW025.

based on Wade being a "Madison Guaranty insider and McDougal business partner" and the \$3,000 dollar amount.⁶¹⁰

A review of the Clinton campaign bank account records does not reveal any \$3,000 campaign contribution by Wade. However, Chris and Rosalee Wade made a \$2,000 contribution on April 4, 1985. Check #310 from account #9628-06 at Arkansas Federal was issued to the Bill Clinton Campaign Committee.⁶¹¹ A May 31, 1994 *Arkansas Democrat Gazette* article reported that Wade stated there was no connection between the \$3,000 check he received from Whitewater in February and the \$2,000 campaign contribution. He also stated that he did not recall the reason he received the \$3,000 check from Whitewater.

Bank statements for Wade's account at Arkansas Federal, if they exist, would assist in determining if Wade obtained the \$2,000 from an outside source. These statements are being sought. In addition, arrangements are being made with the Independent Counsel to interview Wade.

5. Possible contributions from Lorene and Susan McDougal.

On February 26, 1985, James and Susan McDougal issued check #616 from their Madison Guaranty joint account #424 to Lorene McDougal. The check was for \$4,500 and was signed by Susan McDougal. The memo line on the check was left blank and the specific purpose of the payment is not known.⁶¹² It has been suggested that this \$4,500 was "potentially utilized for illegal campaign contributions."⁶¹³ This allegation appears to be based on the amount of the check (i.e., three times the individual limit of \$1,500 per election).

This check was deposited in Lorene McDougal's account #3306193 at Madison Guaranty on February 26, 1985.⁶¹⁴ It cleared the McDougals' account #424 on February 27, 1985.⁶¹⁵ A review was made of documents relating to Lorene McDougal's accounts at Madison Guaranty; no checks of \$1,500, \$3,000 or \$4,500 were located. In addition, the available information on deposits to the Bill Clinton Political Committee account at the Bank of Cherry

610 CR0722.

611 BW025.

612 IC27327-28.

613 CR0722.

614 IC27253-54.

615 CR0094.

Valley does not show a contribution from Lorene McDougal in February, March or April 1985. Therefore, it does not appear that the \$4,500 Lorene McDougal received from James and Susan McDougal was used to make campaign contributions.

It also has been suggested that this \$4,500 was "diverted" by the McDougals from the proceeds of a \$351,503 Madison Guaranty loan obtained for home purchase and renovation.⁶¹⁶ The proceeds of this loan were posted to the McDougals' joint account #424 on February 22, 1985. The day before this deposit, the account was overdrawn by \$8,560.05.⁶¹⁷ Between February 22, 1985 and February 27, 1985, the date the check to Lorene McDougal for \$4,500 was posted to the McDougal's joint account, however, four other deposits, totaling \$11,197, were posted to the account. One was a \$10,000 deposit from Madison Marketing posted February 25, 1985.⁶¹⁸ Hence, from the documentary evidence alone, one cannot determine the source of the funds from which the \$4,500 check was drawn. Because the \$4,500 check to Lorene McDougal does not appear to have funded a campaign contribution, further research into the specific source of these funds has not been conducted.

Madison Marketing issued a \$3,000 counter check from account #7011872 to Susan McDougal on October 31, 1985, over six months after the fund-raiser. This check was signed by Lisa Aunspaugh.⁶¹⁹ Because the check was for \$3,000, it has been suggested that this check be reviewed together with the other campaign contribution transactions.⁶²⁰ The \$3,000 counter check was posted to the Madison Marketing account on November 1, 1985. At the end of this day, the balance in the account was \$84,402.14.⁶²¹ This check was deposited on October 31, 1985 in James and Susan McDougal's account #424 at Madison Guaranty.⁶²²

A review of the McDougals' account #424 from October through December 1985 does not reveal any checks of \$1,500, \$3,000 or \$4,500. In addition, the available information on deposits to the Bill Clinton Political Committee account at the Bank of Cherry Valley did not show a contribution from Susan

616 CR0722. See Part VII.C above.

617 CR0094.

618 IC02150; IC23837; IC24151. The Madison Marketing check for \$10,000, written to and signed by Susan McDougal, contains no description of what the payment was for.

619 CR0778-79, IC31669-70.

620 CR0723.

621 IC00453.

622 The account number is encoded on the back of the check. CR0779.

McDougal around October 1985. Therefore, it does not appear that the \$3,000 from Madison Marketing was used to make a campaign contribution.

6. The Henleys' contributions.

Jim and David Henley are two of Susan McDougal's brothers. They worked for Madison Financial as real estate salesmen.

Jim Henley:

On April 3, 1985, Jim Henley wrote a \$1,000 check to the Bill Clinton Campaign. The check, which was #187, was issued from Jim Henley's account (#7101511) at Madison Guaranty.⁶²³ This check was deposited in the Bill Clinton Political Committee account at the Bank of Cherry Valley on April 29, 1985.⁶²⁴ Bank statements were not available for Jim Henley's account for the period between March 14, 1985 and June 18, 1985. Therefore, it is not possible to determine whether Jim Henley received \$1,000 from an outside source which he then transferred to the Clinton campaign. The available transaction detail for Henley's account for this period was searched using another method to locate a deposit but with no result. On March 14, 1985, a \$1,300 deposit was made into his account consisting of a \$1,500 check from Madison Real Estate less \$200 cash.⁶²⁵ This check may be a commission check; Henley received similar checks on other occasions. The balance in the account was approximately \$18,000 in the middle of March--more than enough to make a \$1,000 contribution.⁶²⁶ Consequently, no evidence was located that Henley did not make the contribution personally.

David Henley:

On April 4, 1985, David Henley wrote a \$1,000 check to the Bill Clinton Campaign. The check, #589, was issued from account #7101546 at Madison Guaranty.⁶²⁷ This check was deposited in the Bill Clinton Political Committee account at the Bank of Cherry Valley on April 29, 1985.⁶²⁸ Bank statements were not available for David Henley's account for the period between March 14, 1985 and May 15, 1985. The available transaction detail for David Henley's

623 DKRT200628.

624 BW020-026.

625 IC02200; IC26641; IC26666.

626 IC02200.

627 DKRT200628.

628 BW020-026.

account for this period was searched to locate a deposit but with no result. Therefore, it is not possible to determine whether David Henley received \$1,000 from an outside source which he then transferred to the Clinton campaign. The largest deposits to the account were periodic deposits of \$621 from Madison Financial, which were likely salary checks.⁶²⁹ No evidence was located that David Henley did not make the contribution personally, although the balance in his account earlier in March 1985 ranged from approximately \$200 to \$700--not enough to make the entire \$1,000 campaign contribution.⁶³⁰

Summary:

The foregoing discussion demonstrates that little can be established from documentary evidence alone about whether these campaign contributions have any relationship to insured deposits from Madison Guaranty. Further information from witnesses would be necessary to reach any firm conclusions about this subject.

It bears noting that a number of Jim McDougal's associates shared McDougal's keen interest in politics and might not have needed funds or inspiration from others to make political contributions. R. D. Randolph, for example, gave \$2,000 to Governor Clinton on April 4, 1985. He says he used his own money and described himself as an annual contributor dating back at least as far as President Clinton's first race for Attorney General (1976) and possibly as far as his first race for Congress (1974).⁶³¹ Randolph's contributions also continued after April 1985; he said, "I'm sure I invested in the presidency."⁶³² Randolph also took an interest in other candidates; he recounted how, in 1976, he sold an apartment building "in the morning and caught the plane to go to Jimmie's [President Carter's] inauguration."⁶³³

629 IC23899; IC28383.

630 IC02201.

631 Randolph Interview, Mar. 9, 1995, at 61:2-63:1. Pat Harris said he used his own money to make a contribution but added that Jim McDougal had asked him to make the contribution. This was the only occasion on which Harris made a contribution to Governor Clinton. Pat Harris Deposition, Feb. 17, 1995, at 74:17-78:15.

632 *Id.* at 61:20-25

633 *Id.* at 11:10-13:4. Presumably he means January 20, 1977.

C. David Hale and the International Paper deal.

1. The loan to Susan McDougal dba Master Marketing and the International Paper parcel.

Judge David L. Hale was appointed to a Pulaski County Municipal Court judgeship by Governor Clinton in 1979; he held that post until 1993.⁶³⁴ Between 1980 and 1993, Hale and two family members owned Capital Management, Inc., a "specialized small business investment company" licensed by the Small Business Administration to invest in "disadvantaged small businesses." In 1993, the Small Business Administration placed Capital Management in receivership because its accumulated losses exceeded its private capital by 171 percent.⁶³⁵

According to the GAO, Capital Management made many inappropriate loans to people who were not disadvantaged by any SBA standard,⁶³⁶ including loans to companies secretly owned by Hale himself.⁶³⁷

The press reports that Hale claims he was pressured by Governor Clinton and Jim McDougal into lending \$300,000 to Susan McDougal in April 1986.⁶³⁸ Hale claims that McDougal told him that the loan would help clean up problems at Madison Guaranty, which was under pressure from federal regulators.⁶³⁹ Other press reports, quoting McDougal, assert that the \$300,000 ended up in Whitewater and was used to buy a parcel of land, sometimes called the Woodson Industrial Tract, from International Paper Company.⁶⁴⁰ While the truth or falsity of Hale's claim cannot be determined

634 General Accounting Office, Report to the Chairman, Committee on Small Business, House of Representatives, *Inadequate Oversight of Capital Management Services, Inc.-- A SSBIC 2 n.4* (GAO/OSI-94-23, Mar. 21, 1994) (hereinafter, "*GAO Capital Management Report*").

635 *Id.* at 1-2.

636 There is no clear SBA definition of "socially or economically disadvantaged." In any case, Hale stretched the envelope by defining everyone in Arkansas to fit the definition. Hale argued, "Arkansas is the poorest state in the United States This area has been determined by the Congress to be Economic[ally] depressed in comparison with that of the Third World Countries." *Id.* at 10-11.

637 *Id.* at 5-9.

638 *Id.* at 16.

639 *Id.*

640 *Id.*

from the available documentation,⁶⁴¹ \$25,000 of the \$300,000 was used to fund part of Whitewater's purchase of the Woodson Industrial Tract from the International Paper Company.

Jim McDougal first became interested in the International Paper parcel, 810 acres located close to the Pine Bluff Highway (U.S. 65) southeast of Little Rock, in February 1986.⁶⁴² McDougal, who called the parcel "Lorance Heights," planned to market it as a residential area for elderly and low-income people.⁶⁴³ McDougal signed a contract with International Paper on March 4, 1986 to purchase the property but the deal did not close until October 1986.⁶⁴⁴

McDougal purportedly acted for Whitewater, and the paper for the transaction shows Whitewater was the purchaser. A deed and a mortgage executed October 5 and 10, 1986, respectively, and recorded October 20, 1986 show Whitewater as the grantee.⁶⁴⁵ At the time, the McDougals told International Paper that they were the sole owners of Whitewater, with Jim being the president and Susan the secretary.⁶⁴⁶

International Paper sold the 810 acres for \$550,950.⁶⁴⁷ At closing, \$80,190 was paid in cash.⁶⁴⁸ International Paper took back a mortgage covering two promissory notes totaling \$470,760.⁶⁴⁹ Whitewater, however, did

641 Hale has not been interviewed; the Independent Counsel has requested that the RTC not do so for the present. McDougal refused to answer questions based on his Fifth Amendment rights.

642 GAO Capital Management Report at 13.

643 *Id.*

644 GAO Capital Management Report at 13.

645 DKRT200634-40. For Whitewater, only the McDougals signed these documents.

646 GAO Capital Management Report at 15.

647 GAO Capital Management Report at 13.

648 *Id.* at 13 n.14. The cash included McDougal's personal check for \$25,000 dated April 29, 1986 and a cashier's check for \$55,190 dated October 10, 1986. The latter check has not been located.

649 DKRT200639-40. Chart 16 outlines this transaction.

not have this much money.⁶⁵⁰ In fact, Whitewater itself never contributed any money to this land acquisition. It did, however, become liable for the debt.⁶⁵¹

Although the *GAO Capital Management Report* speaks of \$25,000 having been paid at the closing in October (it does not say by whom),⁶⁵² the \$25,000 actually was earnest money that had been paid six months earlier, on April 21, 1986, using a personal check written on the McDougals' joint account, Madison Guaranty account #424.⁶⁵³ According to a memorandum printed off of a Madison Guaranty computer disk, McDougal directed Kirby Randolph (the wife of R. D. Randolph and a receptionist at Madison Guaranty) to cut the check:

Please issue a personal check for me to International Paper Realty Corporation for \$25,000, earnest money on the purchase of a portion of the Woodson Industrial tract, Pulaski County, approximately 775 acres, Whitewater Development Corporation. Return to me at Castle Grande.

At the beginning of April, the McDougals had less than \$25,000 in the joint account at Madison Guaranty (no. 424), on which the check was drawn.⁶⁵⁴ By April 7, their balance was down to \$3,094.48. The next day, April 8, \$300,000 was deposited into Jim and Susan McDougal's joint account.⁶⁵⁵ The money came from David Hale's Capital Management Services' April 3, 1986 loan of \$300,000 to Susan McDougal d/b/a Master Marketing. The loan was in the form of a 12 percent promissory note due April 1991, interest only (i.e., \$36,000 a year) for the first three years, then \$14,122.05 a month interest and principal thereafter.⁶⁵⁶

Microfilm of the canceled check shows that it is made out to "Susan McDougal d/b/a Master Marketing."⁶⁵⁷ Nobody has endorsed it, but on the back side it is stamped "Deposit to the Account of the Named Payee. Missing

650 RTCKC0408.

651 DKRT200639-49.

652 *GAO Capital Management Report* at 13 n.14.

653 McDougal check on account #424, IC54502, which cleared April 29, 1986, as shown on his April 30, 1986 bank statement. IC02156.

654 They had \$18,712.14. IC02154.

655 IC02154.

656 PMS0659; *GAO Capital Management Report* at 11 n.10.

657 IC52550-51.

endorsement guaranteed by Madison Guaranty Savings and Loan Association Little Rock." The numbers 00424 also appear, indicating the account into which the money was deposited.⁶⁵⁸

Furthermore, there was no specific account maintained at Madison Guaranty (or, so far as is known, anywhere else) for any "Master Marketing." While there was an account for Madison Marketing (which Susan McDougal owned), that account did not receive \$300,000, or any such sum of money, at any time near this.

The SBA summarizes the loan as follows:

The loan was ostensibly given to provide working capital for Mrs. McDougal's newly created advertising firm, Master Marketing, and was secured by equipment, inventory, commissions, and the personal guarantees of Mr. and Mrs. McDougal. At the time of the loan, both Mr. and Mrs. McDougal provided a combined financial statement reporting a net worth of \$2.2 million. Mrs. McDougal's eligibility was documented in the boilerplate document, "Determination of Disadvantaged Small Business Concern."⁶⁵⁹

A security agreement, a loan agreement and an SBA portfolio financing report bear out the SBA's summary.⁶⁶⁰ In particular, the "Determination of 'Disadvantaged Small Business Concern,'" which Susan McDougal signed, provides:

The owner of the herein SBC because of her economic background and the social and economic system which she works [sic] has prevented her from obtaining financial and other assistance available to the average entrepreneur in the economic mainstream.⁶⁶¹

The disposition of the entire \$300,000 in loan proceeds is outlined in Chart 17. Of the \$300,000, only \$25,000 went to this International Paper

658 IC52551.

659 *Id.* at 11-12.

660 PMS0658-61, 0669-76, 0704-09.

661 PMS0709.

transaction.⁶⁶² The balance of the \$300,000 went to pay off numerous apparently unrelated obligations.

This loan was not the only connection between Hale and the McDougals. For example, Madison Guaranty loaned Hale almost \$1 million in two installments: Loan 2706, for \$700,000, made August 1, 1985, and Loan 4116, for \$290,000, made April 30, 1986 and modified February 17, 1987.⁶⁶³ Among others, companies associated with Mr. Hale that had loans with Madison Guaranty included AMC Financial Corporation (\$124,787). Also, in October 1987, Capital Management became a shareholder in Castle Sewer and Water Corporation, which had outstanding loans from Madison Guaranty totaling \$1,050,000. The available evidence does not establish any link between these transactions and Whitewater.

2. The role of Whitewater with respect to the International Paper parcel.

The documentary evidence offers one explanation as to why Whitewater originally was the purchaser of the International Paper parcel, although this requires drawing an inference. On November 14, 1986, Jim McDougal sent the Clintons a "status report on Whitewater Development Corporation."⁶⁶⁴ McDougal reported that, to date, the company had lost approximately \$90,000. He noted that Charles James kept the books and would be happy to go over them with the Clintons. He reported that, as of the previous summer, all the property had been sold. He expressed the opinion that purchase agreements and notes from the sales would be enough to amortize the debt. He said that bank relations (with Citizens Bank) had been difficult because of five changes in management and the bank's failure to keep him informed. He also noted that three of the purchasers of the more expensive lots had defaulted, that this had created a large deficiency on the note payment and that sales during the winter months were unlikely.⁶⁶⁵

662 IC54502. Another \$10,936 went to International Paper, but the available documents do not explain why and offer no basis to relate the payment to this land purchase. It is possible that the \$10,936 pertained to "Dogpatch Addition" (see Parts VII.B.1, VII.B.3, VII.B.5 and VII.C above) but that cannot be verified either.

663 See PMS0722-24 for Ingersoll & Bloch's summary of these loans as of June 26, 1987. At that time, both were current and Hale had paid down roughly \$101,667 on Loan 4116. Loan 2706 was secured by a strip shopping center built by Hale in 1983. The loan file is rather complete by Madison Guaranty standards and there is an appraisal which predates the loan. PMS0726-815.

664 DKRT200475, 200668, 200779, 700303, 700320, 400187 (unsigned draft), 700336 (draft), 700338-39 (handwritten version of the letter).

665 *Id.*

Having thus summarized recent events, McDougal went on:

I was motivated to send you a stock transfer by two factors. First, I wanted to get you out of the company because of the high potential for embarrassment to you. Secondly, I had hoped to be able to take advantage of the \$90,000.00 loss for tax purposes since Susan and I have in large measure contributed to the company the funds necessary to cover these losses. I can well understand your desire to keep your name off the note and hope you are successful in accomplishing this.⁶⁶⁶

Nowhere in the letter was there any reference to the International Paper deal, which had closed the previous month.

The letter suggests a tax motivation for seeking to clear the Clintons off the books. McDougal had bought 810 acres of land the month before in Whitewater's name and committed Whitewater to pay notes totaling \$470,760--facts he omitted from his letter to the Clintons.⁶⁶⁷ He apparently hoped to shelter any gain he realized on a disposition of the International Paper parcel by setting off Whitewater's losses against that gain.

If tax planning was the motivation, thereafter McDougal evidently abandoned the plan. On November 30, 1986, McDougal executed a general power of attorney in favor of his wife.⁶⁶⁸ On December 1, 1986, Jim McDougal, acting on behalf of Whitewater as its president, conveyed the 810 acre International Paper parcel from Whitewater to Great Southern Land; the deed was recorded December 15, 1986.⁶⁶⁹ These documents did not relieve Whitewater of the mortgage; they did, however, remove the asset. Jim and Susan McDougal may have owned Great Southern Land outright.⁶⁷⁰

On December 16, 1986, McDougal again wrote the Clintons. Once again, he did not mention International Paper. Instead, he wrote about the Whitewater investment. He stated that defaults by the purchasers of several Whitewater lots had again caused the cash flow from the various notes executed by lot buyers to fall short of the money owed to Citizens Bank on the mortgage. He said that he had negotiated an arrangement with Citizens Bank. According to McDougal, for the next six months, the bank would accept the

666 *Id.*

667 DKRT200639-40

668 WRTC00251.

669 DKRT200650-51.

670 *GAO Capital Management Report* at 15. *But see* n.43 above.

amount Whitewater was receiving from the customers as a monthly payment. He expressed the hope that by spring he could resell the defaulted lots.⁶⁷¹

It is unclear when the Clintons learned of the International Paper transaction. Their signatures do not appear on the relevant documents. McDougal's letters to them do not mention the transaction. The transaction did not benefit Whitewater or the Clintons; in fact, it left Whitewater with a large mortgage but no corresponding asset, and eventually it led to litigation and the entry of a judgment against Whitewater.

3. Aftermath of the Hale loan and the International Paper deal.

The Hale loan: On April 3, 1987, Susan McDougal's first interest payment to Capital Management came due. Susan McDougal wrote a letter to Hale stating that, "[b]ecause of the fluctuation between payment of media expenses and reimbursement, it will be 30 to 60 days before I can make this payment to you."⁶⁷² On April 22, 1987, Susan McDougal assigned Capital Management Services 5,745 shares of Madison Guaranty stock as additional security for the loan.⁶⁷³ Unfortunately for Hale, the McDougals had already pledged the same stock to Worthen Bank, which had a first lien of \$110,000.⁶⁷⁴

Hale sought advice from Jim Guy Tucker,⁶⁷⁵ whose firm regularly represented Madison Guaranty. Tucker's associate James Breck Speed, III replied, advising Hale how to gain a security interest in the stock.⁶⁷⁶ Notwithstanding Worthen Bank's senior lien, on June 1, 1988, the McDougals gave Capital Management a proxy to vote the stock.⁶⁷⁷ Hale never voted the stock or exercised any other ownership rights.⁶⁷⁸

671 DKRT200683, 700301, 700337 (handwritten version).

672 PMS0664.

673 PMS0654.

674 GAO Capital Management Report at 12 n.12; PMS0662.

675 PMS0656. It is not clear from this document whether Hale told Tucker that the matter involved Madison Guaranty. Also, the opinion given by Tucker's associate suggests that Hale told Tucker that the inquiry had to do with a loan about to be made, not one that had been made a year before and now was in default.

676 PMS0656-57.

677 PMS0653.

678 GAO Capital Management Report at 12 n.12.

Capital Management never received any payment from the McDougals on the \$300,000 loan, so it sued Susan McDougal and it began to look for other potential sources of recovery. In October 1988, Gary Green, a lawyer in Little Rock who represented Capital Management, approached F. Guthrie Castle, Jr. of Gerrish & McCreary in Memphis, who was then representing Madison Guaranty in an accountants' malpractice case against Frost & Company (Madison Guaranty's auditors in 1984 and 1985), to see whether Castle might represent Hale against Frost & Company with respect to the \$300,000. Hale wished to argue that Frost & Company's audit of Madison Guaranty's financial statements had induced him to make the loan.⁶⁷⁹ On March 30, 1989, Castle wrote to Green declining to represent Hale because the FDIC had just decided to replace Castle's firm on the Frost matter with the Rose Law Firm. Castle suggested that Green contact Webster Hubbell at the Rose Law Firm.⁶⁸⁰

Nothing came of that, but on February 6, 1989, the Pulaski County Circuit Court entered a judgment on the unpaid loan for \$396,262.91 in favor of Capital-Management Services, Inc. and against Susan McDougal, doing business as Master Marketing. The judgment remains unsatisfied.⁶⁸¹

The International Paper deal: In early 1987, the McDougals subdivided Lorange Heights and began selling lots. The purchasers became disenchanted with the lots. On May 9, 1988, 48 individuals filed suit against Great Southern Land Company and International Paper Realty Corporation, alleging a failure to record the plat of Lorange Heights, to pay certain real estate taxes, to blacktop certain roads and to provide gas service to certain lots.⁶⁸² International Paper filed a third-party complaint against, among others, Whitewater Development Company, alleging nonpayment of the mortgage. On March 15, 1989, International Paper foreclosed on the property and won a judgment for \$478,126.65 against Whitewater. The judgment remains unsatisfied.⁶⁸³

679 PMS0595, 0604-09.

680 PMS0595.

681 Judgment in *Capital-Management Services, Inc. v. Susan McDougal d/b/a Master Marketing* (Pulaski Cty. Circuit Ct.), PMS0602-03.

682 *Newgent, et al v Great Southern Land Co., et al.*, No. 88-2017 (Pulaski Cty. Chancery Ct.).

683 Decree of Foreclosure filed Mar. 15, 1989 in *Newgent, et al. v. Great Southern Land Co., et al.* and *International Paper Realty Corp. v. Whitewater Development Corp., et al.*, No. 88-2017 (Pulaski Cty. Chancery Ct.); GAO *Capital Management Report* at 15.

IX. WHITEWATER AFTER THE LAND WAS GONE.

A. The financial wrap-up (except for lot 13).

This report departed from the chronology to present the funds tracing work and to investigate other possible ties between Madison Guaranty and Whitewater. Now it returns to the chronology where it left off, in May 1985.

May 1985 marked more than the end of another fiscal year; it also marked the end of Whitewater as a project. By the end of May, the land was gone; all that remained behind was debt and notes receivable that did not generate enough cash to service the debt. The Company would continue to exist but there was never again any prospect that it might turn a profit.

1. The bulk sale to Ozark Air Service and its assumption of some of the debt.

On May 4, 1985, Ozark Air Service, Inc. ("Ozark Air")⁶⁸⁴ purchased the remaining 24 unsold lots (lots 2-6, 9-12, 14-18, 20, 22-24, 29-30, 35, 37, 43-44) from Whitewater Development Company, Inc.⁶⁸⁵ Ozark Air acquired the properties in exchange for (1) a 1979 Piper Seminole Aircraft, and (2) Ozark Air's assumption of \$35,000 of the \$95,591 balance that was still owed by the Clintons and the McDougals on the original loan from Citizens Bank (loan no. 5885).⁶⁸⁶ Ozark Air paid much less than the amount at which the lots were priced for sale on an inventory list entitled "Whitewater Estates," dated November 23, 1984.⁶⁸⁷ That inventory priced 23 of the 24 purchased lots at a total of \$191,550.⁶⁸⁸

684 Ozark Air was incorporated on November 1, 1984 by Wade and Russell E. Webb. Its Articles of Incorporation state that it was formed, among other purposes, "to operate aircraft as a private or contract carrier, for the purpose of carrying passengers and freight," and to purchase and develop real estate. DKRT700010.

685 DKRT100318, 200743-46, 400481.

686 *Id.* According to one press account, the airplane was valued at \$35,000, used by Madison Guaranty and eventually sold to Jim McDougal. *The New York Times*, Feb. 7, 1994.

687 DKRT100994.

688 Lot 15 does not appear on the list. Its original list price was \$7,500. The 1984 list prices were identical to the original Whitewater list prices with the exception of lot 33 (\$13,000 on the original price list versus \$15,500 on the November 1984 inventory) and lot 37 (\$11,000 versus \$15,000). DKRT900358, DKRT100994.

At the time of the purchase, Citizens Bank still held the mortgage on the 24 lots.⁶⁸⁹ Citizens Bank agreed to release the lots one at a time, with the lot to be designated by the buyer, for each payment of \$1,600 made by Ozark Air on the mortgage. Citizens Bank however did not release Whitewater from any obligation under the mortgage until such time as a particular lot was released through payment by Ozark Air.

Wade apparently had difficulty making payments on the Citizens Bank loan. On September 27, 1985, McDougal wrote a letter to Wade complaining that Citizens Bank had not subtracted \$35,000 from "our balance," "causing us to have to pay interest on that sum."⁶⁹⁰ On February 3, 1986, Ron Proctor (Vice President, 1st Ozark National Bank (formerly known as Citizens Bank)) wrote a letter to McDougal with enclosures, listing the payments that Chris Wade had, and had not, made on the \$35,000 Whitewater loan he had assumed on May 4, 1985.⁶⁹¹ According to the letter, the balance was paid down to approximately \$25,500 at that time. By October 1989, Wade had paid the balance down to approximately \$15,083.⁶⁹² On November 16, 1990, Wade asked 1st Ozark National Bank for a deferment on the payments until April 1991.⁶⁹³ Because Wade had been "very helpful with the managing of the collection" of the loan, Proctor granted the deferment.⁶⁹⁴

The Wades filed a voluntary Chapter 11 bankruptcy petition on November 1, 1989 in the United States Bankruptcy Court for the Western District of Arkansas, Case No. 89-13-144M.⁶⁹⁵ The bankruptcy was converted to a Chapter 7 proceeding on August 27, 1990.⁶⁹⁶ The case remains open.

The press reports that Jim Blair (who provided advice to Mrs. Clinton regarding commodities trading and is the General Counsel for Tyson Foods) flew to Flippin, Arkansas before the 1992 presidential elections to ask Wade to pay the remainder of the money he owed on the Whitewater loan, as it was still guaranteed by the Clintons. The article reports that, although Wade was "entangled" in bankruptcy at the time, he borrowed the money and paid the

689 DKRT200745-46.

690 DKRT700412. The letter is unsigned. It is unknown whether Wade ever received it.

691 DKRT700643-44.

692 DKRT100470-72

693 CBF0424.

694 *Id.*

695 RTCKC39672

696 RTCKC39728

balance.⁶⁹⁷ The documents show that the loan was paid off on May 12, 1992 by a check from Ozark Air.⁶⁹⁸

2. The decline of the recourse debt.

From 1980 through May 31, 1986, the aggregate amount of debt associated with Whitewater remained within a relatively narrow band: \$225,659 to \$289,513.⁶⁹⁹ In contrast, the portion of the debt that was recourse to the shareholders trended downward more sharply.

Over time, particularly from May 31, 1983 forward, more and more of the debt became non-recourse to the shareholders because much of the recourse debt was paid down by non-recourse loans from McDougal-controlled entities. At May 31, 1983, 66 percent of the total project debt was recourse to the Clintons and McDougals. By May 31, 1984, the recourse amounts had declined to 58 percent of the total project debt.

The decline became notably greater in the 12 months ended May 31, 1985.⁷⁰⁰ By that date, only 41 percent of the total debt remained recourse. In effect, between May 31, 1983 and May 31, 1985, the total venture debt declined by only \$13,698, but the recourse debt was replaced by McDougal-related entities' non-recourse debt of \$64,634. This pattern continued through May 31, 1986, by which time the recourse portion of the total debt (now \$225,659) had been further reduced to \$77,679, or only 34 percent of the total.

In effect, the recourse debt was replaced by non-recourse debt. Lenders unaffiliated with the McDougals were taken out by lenders that the McDougals controlled (i.e., the McDougal-controlled entities). The Clintons made no advances after August 1980 until fiscal year 1987. Instead, the McDougals progressively removed the burden of the recourse debt from the shareholders by having companies that the McDougals controlled replace the banks as the project's principal creditors.⁷⁰¹

697 *The New York Times*, July 5, 1994.

698 CBF0432, 35

699 Most of this decline occurred in fiscal year 1986. On May 31, 1985, total debt was \$275,815. A year later, it was \$225,659. For purposes of this discussion, total debt includes shareholder payments made outside of the Company. These amounts are considered obligations to the shareholders

700 Accordingly, fiscal year 1985 is the year of the largest funds transfers from McDougal-controlled entities to Whitewater.

701 Chart 18 depicts the change in the Whitewater debt structure.

3. Operations and cash flow in fiscal years 1985 and 1986.

Fiscal year 1985: After only one new lot sale in the first 11 months of fiscal year 1985, the remaining 24 lots were sold to Ozark Air Services, as just described. The sales in 1985 (including sales of foreclosed lots) yielded only \$4,600 in down payments. The Ozark sale was a non-cash transaction involving an airplane exchange and the assumption of \$35,000 debt. Hence, in total, in 1985, Whitewater realized only \$23,131 in lot sale down payments and payments received on notes receivable (both principal and interest). After deducting \$31,024 for commissions and other operating expenses, the company had negative cash flow of \$7,893 before debt service. Total payments made to banks during the fiscal year amounted to \$67,745, consisting of \$20,629 of interest and \$47,116 in principal. After deducting this amount from cash flow contributed from operations, Whitewater had negative cash flow after debt service of \$75,638. After the transaction with Ozark Air closed, there was no real prospect that Whitewater would ever turn a profit. By May 31, 1985, Whitewater was technically insolvent. It had no remaining land and the value of its debt exceeded its only significant asset, its notes receivable.

Fiscal year 1986: Cash flow into Whitewater from lot sale notes receivable amounted to \$22,315 in the fiscal year ended May 31, 1986. The amount collected in fiscal year 1986 almost, but not quite, sufficed to service the Citizens Bank mortgage. With less debt service required of Whitewater (due both to the \$24,000 in principal payments made in late 1984 and the reduction in required payments as a result of the November 1984 renewal, as described), there was less need to find outside capital to fund these payments. The volume of cash flowing from McDougal-controlled entities into Whitewater was correspondingly less in fiscal year 1986. Thus, from June 1, 1985 through May 31, 1986, three deposits for \$10,200 combined were made into Whitewater's bank account--as compared to \$73,342 in the shorter period from September 10, 1984 through April 9, 1985.

Two of the three deposits made in fiscal year 1986 (\$1,500 on July 3, 1985⁷⁰² and \$1,200 on October 18, 1985⁷⁰³) were deposited into Whitewater's escrow account at Citizens Bank. The source of those deposits is not known.⁷⁰⁴

702 DKRT400483

703 DKRT400486.

704 These two payments were recorded as loans from Jim McDougal. DKRT600074, 400234, 400235.

The third deposit, for \$7,500 on November 8, 1985,⁷⁰⁵ was made into Whitewater's Madison Guaranty checking account. This deposit has already been discussed.⁷⁰⁶ The source of this deposit was Madison Marketing. The \$7,500 deposit was used to pay \$7,322.42 to Security Bank of Paragould.⁷⁰⁷

From inception of the venture through May 31, 1986, Whitewater's cash flows can be summarized as follows:

Cash Flows Through May 31, 1986

Cash Inflows:

Bank loans	\$302,611
Lot sale related revenues	200,974
Payments on Whitewater-related loans	
from unidentified sources	39,474
Miscellaneous sources	<u>5,913</u>
 Total inflows	 \$548,972

Cash Outflows:

Purchase of land and other land improvements	(257,108)
Principal and interest payments to banks	(385,679)
Commissions and other operating expenses	(69,374)
Payment to Earth Movers	<u>(30,000)</u>
 Total outflows	 (\$742,161)
 Cash shortfall	 (\$193,189)

Funds provided by shareholders to cure shortfalls:

McDougals, net	158,523
Clintons	<u>35,970</u>
 Total from shareholders	 <u>\$194,493</u>
 Cash in bank, May 31, 1986	 <u>\$1,304</u>

705 RTCKC0396; RTCKC0470.

706 See Part VII.B.9 above.

707 DKRT700361. Of the total, \$5,000 was to principal and \$2,322.42 was to interest.

Complete financial records are not available after May 31, 1986, as a general ledger for Whitewater was not maintained after that date. By May 31, 1986, however, substantially all significant activity had taken place, except for collecting the remaining installment note payments and servicing the Citizens Bank and the Security Bank loans.⁷⁰⁸ Therefore, the summary of cash flow data through May 31, 1986 provides perspective on how the venture performed financially.⁷⁰⁹

The project lost money. It had an overall negative cash flow after debt service of \$205,498. The loss was due principally to Whitewater's failure to sell lots profitably, when they sold at all.⁷¹⁰ The venture also lost money because of the increase in interest rates in the late 1970s and the early 1980s. Interest rates on Whitewater debt reached as high as 19 to 21 percent at points during the life of the venture, while the interest rates that Whitewater could charge lot buyers was capped at a substantially lower rate.

Most of the Clintons' personal investment in Whitewater was made by August 1980, when they funded certain debt service payments. Through May 31, 1984, the Clintons' contribution to the venture, while never exactly equal to the McDougals', was at least of a similar magnitude. This balance ended after May 1984; by the end of 1986, the McDougals and their entities had contributed far more.⁷¹¹

The McDougals and entities they controlled, besides funding initial land improvements and interest through Great Southern Land, deposited \$73,342 into Whitewater in the fiscal year ended May 31, 1985 and \$10,500 more in the year ended May 31, 1986. These funds cured or prevented overdrafts from occurring as a result of Whitewater's payments to third-party banks and to Chris Wade or entities that he controlled.⁷¹²

708 The Security Bank loan was paid off in December 1988.

709 Chart 19 in the Appendix summarizes sources and uses of funds from the inception of the project through May 31, 1986.

710 The May 1985 bulk sale covered 24 of the 44 lots. It occurred almost seven years after the McDougals and the Clintons bought the land. The lots simply did not sell fast enough to make the venture profitable.

711 The statements assumes that one lumps together the McDougals as individuals with the entities that they controlled. If the McDougals were to be distinguished from their entities, the numbers would be far closer. Of the \$228,937 (gross) advanced by the McDougals and their entities, the McDougals as individuals advanced \$32,284, McDougal as a trustee advanced \$480 and the entities advanced the remaining \$196,173.

712 Chart 20 provides a time line showing key financial indicators over the life of the project.

4. The Lyons Report.

On March 23, 1992, James M. Lyons presented his report on Whitewater to Governor and Mrs. Clinton.⁷¹³ Accompanying the Lyons Report was a letter to the Clintons from Patten, McCarthy & Associates, Inc., who provided related consulting services.⁷¹⁴ Both the Lyons Report and the Patten, McCarthy letter have been reviewed, as has a draft of the Lyons Report dated March 18, 1992. The draft included considerably more financial detail than the final report.⁷¹⁵

The final Lyons Report made the following conclusions:⁷¹⁶

In 1979, WDC [Whitewater Development Company] was formed by you with James and Susan McDougal to develop some 200 acres of land in the Ozarks. From the available records, it is clear that at all material times the McDougals or their agents exercised total control over the management and operation of the corporation and its investments. Your interest in this investment was limited to that of fifty percent shareholder in a corporation. However, there is no evidence that you received annual reports or regular financial summaries from the corporation's management.

The Lyons Report continued:

Even though you were passive shareholders, you assumed considerable financial responsibility for a corporation whose liabilities exceeded and continue to be greater than its assets. From the beginning of the venture through May, 1991, you invested approximately \$70,000 in the corporation, for which you have not received any return other than payments on loans incurred for the benefit of WDC.

The Patten, McCarthy summaries more specifically conclude the Clintons "invested, loaned, or otherwise advanced" approximately \$68,900 (actually \$68,382⁷¹⁷) in Whitewater since 1978. Over the same period, the McDougals

713 SN000000074

714 SN000000076

715 DKRT800112A. For example, individual payments made by Whitewater's shareholders are disclosed, along with the dates and purposes.

716 SN000000074-075.

717 SN000000079.

invested, according to Patten, McCarthy, approximately \$92,200.⁷¹⁸ In 1994, the Clintons acknowledged that \$22,200 (actually \$22,245) of the \$68,900 attributed to them was unrelated to Whitewater.⁷¹⁹ Deducting these items reduces the Clinton investment, as summarized in the Lyons Report, to \$46,137 (\$68,382 - \$22,245 = \$46,137).

This report (as opposed to the Lyons Report) stated earlier that the Clintons had invested \$35,970 through May 31, 1981, including \$13,350 of loan payments they made during that fiscal year. For the Clintons, five financial events related to Whitewater occurred after that. These include:

- The Clintons made a \$1,636 interest payment to Security Bank in 1986;
- The Clintons made a \$1,474 interest payment to Security Bank in 1988;
- The Clintons made a Whitewater property tax payment of \$1,275 in 1988;
- The Clintons received net proceeds of \$1,640 resulting from the lot 13 Logan foreclosure/resale in 1988 (actually a reduction in their investment); and
- The Clintons made \$3,477 of various tax and accounting services payments made in the 1990s.⁷²⁰

If one adds these numbers to the \$35,970, the Clintons' total investment becomes \$42,192.

The \$3,945 difference between this amount and the \$46,137 figure reached by the Lyons Report is explained as follows (there are minor rounding differences):

First, the Lyons Report omits the Clintons' initial \$500 contribution of capital, and thus its calculation of the Clintons' investment should be increased.

718 SN000000078

719 *Washington Post*, Mar. 25, 1994, at A1. This amount includes \$20,745 paid by the Clintons in February 1982 and four payments totaling \$1,500 they made between June 1981 and December 1981 DKRT800341. President Clinton used the \$20,700 to buy property for a cabin for his mother and \$1,500 to make payments on the land. The land and the cabin apparently were not at Whitewater. Apart from being mentioned in the Lyons Report, these investments do not appear to have any relevance to the RTC's investigation.

720 DKRT800143A; A00008204; *Arkansas Democrat Gazette*, Mar. 26, 1994.

Second, the Lyons Report includes a \$1,636 payment by the Clintons to Security Bank twice, once in fiscal 1987 and again in fiscal 1988. Also in fiscal 1988, the Lyons report includes \$904 in payments received by the Clintons from Hilman Logan which they passed on to Security Bank, as well as \$21 of interest recorded on the bank's loan history in connection with a refinancing of the loan which was not received in cash.⁷²¹

Third, the Lyons Report does not adjust downward the Clintons' total investment to reflect their realization of a \$1,640 capital gain in 1988 as a result of the Logan transaction (described below).

Finally, the calculations made in this investigation exclude the \$243 payment made by the Clintons to Citizens Bank of Jonesboro in February 1981. As described earlier in the report, there is no conclusive connection between it and Whitewater.

B. The 1986 examination of Madison Guaranty, the cease and desist order and McDougal's final removal from Madison Guaranty and Madison Financial.

In March 1986, FHLBB began another examination of Madison Guaranty.⁷²² The problems recognized in the 1984 Report of Examination had become much worse.

On June 19, 1986, FHLBB wrote to the Board of Directors of Madison Guaranty to report on its ongoing investigation into the operating practices of Madison Guaranty. This letter alleges a violation of the July 19, 1984 Supervisory Agreement. It notes Madison Guaranty's continued failure to comply with the Board's net worth requirements. As of April 30, 1986, Madison Guaranty's net worth was \$2.6 million, some \$1.65 million short of the minimum requirement. The letter calls on the Board to meet with FHLBB in Dallas.⁷²³

On July 11, 1986, the FHLBB met with Madison Guaranty's board of directors in Dallas. The board was accompanied by counsel: Jim Guy Tucker's partner, John Selig, and his associate Breck Speed. The directors were instructed to remove Jim McDougal or, in effect, have the FHLBB do it for

721 SBP0064. Both items were deducted in the Clintons' 1987 federal income tax return. DKRT1100137

722 The resulting report of examination is dated as of March 4, 1986. PMS0473. This is not the date on which it was completed. Instead, this is the day that, or the day before, the examination started. Jim Clark (Bank Examiner) Interview, Oct. 20, 1994, at 18. Clark reviewed Madison Guaranty records until late August or early September 1986. *Id.* at 22.

723 RTCKC33989-91.

them.⁷²⁴ Selig bargained for a consulting arrangement or a voting trust for the McDougals. The FHLBB Supervisory Agent Walter Faulk said no: the McDougals, Latham and Bill Henley must go.⁷²⁵ They did.⁷²⁶ The same month, McDougal suffered a nervous breakdown. He later was diagnosed^d as manic depressive and had surgery to clear an artery running to his brain.⁷²⁷

Despite the failure of their real estate venture, Governor Clinton and McDougal remained cordial.⁷²⁸ Contact between them appears to have been infrequent, but McDougal called upon Governor Clinton from time to time. For example, in the spring of 1986, after several of McDougal's other real estate projects had problems with the state Arkansas Department of Health over the issue of sewage, McDougal met with Governor Clinton and officials of the Health Department to discuss the matter.⁷²⁹ A staffer's memorandum of the meeting reflects that Governor Clinton described McDougal as his "friend of 20 years who had never asked for a favor"⁷³⁰

724 Steve Cuffman Interview, Apr. 26, 1994, at 15-16; John Selig Interview, June 8, 1994, at 10-11. Sarah Hawkins said the FHLBB "moved in" on July 11, 1986. Hawkins Deposition taken Apr. 9, 1990 in *RTC v. Frost & Company*, No. LR-C-89-216 (E.D. Ark.), at 14.

725 RTCKC33981-88.

726 The same month, Mrs. Clinton returned Madison Guaranty's retainer and took steps to have her firm cease representing Madison Guaranty. Mrs. Clinton's work for Madison Guaranty is beyond the scope of this report. For the most part, that work occurred between May 1985 and July 1986. It ended in the third quarter of 1987. RLF2 03030-31. The available evidence does not link that work to Whitewater.

727 McDougal R.T. at 905, 929-30.

728 For instance, in December 1985, Governor Clinton appointed McDougal a member of the Arkansas Martin Luther King Holiday Commission. The Commission's 38 members included both Arkansas senators and all four of its members of the House of Representatives. DKRT800538A.

729 See generally DKRT800606A-645A.

730 Memorandum from J. Choate to Governor Clinton, Mar. 5, 1986, DKRT800606A-07A. At the meeting, McDougal accused Health Department employees of "duplicity and trickery" and described one employee as "not sane, not qualified, not stable and psychotic." *Id.* According to the staffer, who wrote to Governor Clinton the next day:

I have talked with Tom Butler this a.m. He tells me that the 3 men Jim McDougal referenced in yesterday's meeting have been removed from those jobs. Tom met with their supervisors, too, and spelled out to all of them that none were to talk about Brittany Point, Eden Park or Maple Creek in or outside the office, period, because they don't want to give credence to any of McDougal's allegations. Tom will send over a complete report soon.

(continued...)

C. Mrs. Clinton's work on matters related to Whitewater after Jim McDougal ceased to manage Whitewater's financial affairs.

1. The repurchase of lot 13.

In the spring of 1988, Mrs. Clinton decided to try to reacquire Whitewater lot 13, on which the prefab house had been built in 1981. At the end of 1981, the Clintons had sold the lot to Hilman Logan.⁷³¹ The sale was the typical contract for deed sale where title remains with the seller (the Clintons) unless and until the buyer makes all the payments.

In 1985, Hilman Logan had filed for bankruptcy in Mississippi.⁷³² The assets of his estate included lot 13. He continued making payments on lot 13 until September 1987.⁷³³ He then stopped making payments. At that point he owed \$11,951 in principal, having paid \$9,549.⁷³⁴

In May 1988, Allen W. Bird II, one of Mrs. Clinton's partners, wrote to Logan's trustee in bankruptcy to ask whether he would abandon any interest in lot 13 in return for the Clintons' waiver of any further claim against the Logan estate.⁷³⁵ The trustee responded equivocally, asking for more time to consider the proposal.⁷³⁶

730(...continued)

DKRT800606A. The memorandum does not explain why the responsibilities of these three men were transferred to others. There had been some tension between McDougal and at least one of the "sanitarians" for some time; possibly it was thought best to eliminate personalities as an issue. This sewage issue, which pertains not to Whitewater but to Madison Guaranty projects, is beyond the scope of this report.

731 DKRT700236.

732 Logan had a substantial Mississippi River towboat service, which employed 120 to 130 people, but it failed when its largest customer ceased operations owing Logan approximately \$2.3 million. Disclosure Statement filed in *In re Hilman Logan, et al.*, Consolidated Case No. E-85-40163 (Bankr. N.D. Miss.), RIC003589-609. Logan owned two lots in Marion County (presumably Whitewater lots 25 and 26, which he also had purchased) that he alleged to be worth \$55,000 subject to Citizens Bank of Flippin's lien of \$19,500 plus interest. RIC003597. He also claimed that the modular house on lot 13 was worth \$3,000 more than the \$19,000 debt on it owed to Madison Bank. RIC003605-06.

733 DKRT700236

734 *Id.*

735 *Id.*

736 DKRT700235.

Meanwhile, Chris Wade apparently lined up purchasers willing to pay \$25,000 to \$27,500 for lot 13.⁷³⁷ On July 8, 1988, Bird informed the trustee that if the land sold for \$25,000 cash it would net the trustee roughly \$8,000. On the strength of this, he proposed that the Clintons pay the trustee \$7,000 for a quitclaim deed.⁷³⁸ The trustee wrote back hinting at an acceptance of the offer but noting the need for court approval.⁷³⁹ After a short delay, Bird instructed Chris Wade on August 4, 1988 to arrange for a title report so that the deal could go through. The same day Bird increased the offer from \$7,000 to \$8,000.⁷⁴⁰

On September 7, 1988, the bankruptcy court in Mississippi approved the sale of lot 13 back to the Clintons.⁷⁴¹ After receiving three reminders, Bird finally sent the \$8,000 to the trustee on November 7, 1988.⁷⁴² While the purchasers who had agreed to buy lot 13 were eager to close, they apparently had not arranged their own financing, so Mrs. Clinton faced the possibility that she would continue to finance it. She forwarded this information to her accountant, Yoly Redden:

I wanted you to be aware of these transactions since I am handling them personally rather than through the corporation because we can't find no information about the status of the corporation at this time. I also had to personally guarantee the continuing financing by the bank of the property transactions since the corporation could not legally act in the absence of half of its ownership and officers.

After you have reviewed all of this material, I would appreciate your letting me know if there is anything I need to be doing to maximize whatever personal tax advantage I can obtain out of this turn of events.⁷⁴³

737 This is a fair implication from DKRT700233 and DKRT700227.

738 DKRT400162-63.

739 DKRT700224, 200806.

740 DKRT700217-18, 220-21.

741 DKRT700214-16. The trustee apparently signed the deed on September 14, 1988 but it was not recorded until late November 1988. DKRT700185-87.

742 DKRT700207-10. The check (#2352 dated October 28, 1988) was drawn on the Clintons' Worthen account, payable to "Rose Law Firm Trust Account." DKRT200669.

743 DKRT200810-11

Mrs. Clinton had purchased lot 13 for \$10 in 1980. Mrs. Clinton also took out a loan to finance the purchase and installation of the prefab house. Governor Clinton later refinanced that loan by taking out another loan at Security Bank of Paragould. But from the time Mrs. Clinton obtained the original loan in December 1980 until December 30, 1986, the Clintons themselves never paid any principal or interest on either of the loans. Based on a reconstruction of the related loan payment histories, no evidence that the Clintons made any prior payments was found. This is also consistent with Lyons' findings. Throughout most of these years, Hilman Logan made his payments directly to Madison Bank and, for a time after the loan was refinanced, to Whitewater.

In fact, Whitewater never serviced the loan after November 7, 1985, when a \$7,322.42 check was written (submitted on November 8) which was funded by a Madison Marketing deposit into Whitewater, as described earlier.⁷⁴⁴ Apparently because Whitewater did not pay the interest in 1986, the Clintons made their first payment, an annual interest payment for \$1,635, on December 30, 1986.⁷⁴⁵

On March 9, 1987, Mrs. Clinton wrote a letter to Hilman Logan asking him to make his payments to Security Bank, which he started to do.⁷⁴⁶ Still, in April 1988 the Clintons paid additional interest of \$665.⁷⁴⁷ Until the final transaction in December 1988, those two interest payments were the sum total of the Clintons' personal disbursements with respect to the prefab house loans.

The closing statement dated November 25, 1988 indicates that \$23,860.23 was disbursed to the sellers (the Clintons) at closing.⁷⁴⁸ A \$100 payment for the transfer of the warranty deed to the purchasers (John and Marilyn Lauramoore) decreased the Clintons' net proceeds to \$23,760.23.⁷⁴⁹ With this, the Clintons retired the Security Bank loan on December 29, 1988 with a payment of \$13,253.35 (\$12,444.78 to principal, \$808.57 to interest).⁷⁵⁰

The Clintons reported a \$1,640 capital gain on their 1988 federal income tax return, computed as follows: net proceeds of \$23,758 (a \$2 difference from

744 See Part VII.B.9 above.

745 DKRT400151.

746 DKRT700293

747 DKRT200671

748 DKRT400029

749 DKRT700205 (according to warranty deed).

750 DKRT400185; DKRT400172-73.

that summarized above), less a cost basis of \$22,118.⁷⁵¹ The cost basis consisted of the \$8,000 payment to acquire the property out of bankruptcy and \$14,118 in bank debt paid, incorrectly including \$1,166 paid by Logan, not the Clintons.⁷⁵² In addition, the Clintons also deducted \$1,474 of interest expense in 1988 (\$665 they paid in April and \$809 they paid in December).⁷⁵³

2. Taxes and other issues.

While these transactions were occurring, Mrs. Clinton also paid some of the taxes due on several of the Whitewater lots.⁷⁵⁴ According to Mrs. Clinton, the taxes had accrued on lots that had been sold.⁷⁵⁵ Apparently the lot buyers had not paid their taxes and Whitewater remained owner of record because the buyers had not yet paid off their notes.

Having handled these matters for the corporation, Mrs. Clinton sought a power of attorney from Jim McDougal so that she would have the authority to handle such matters in the future; Mrs. Clinton also enlisted Chris Wade in this effort.⁷⁵⁶ There is no record that McDougal responded; the available evidence does not include a signed power of attorney.⁷⁵⁷ As noted, Mrs. Clinton nevertheless later signed tax documents indicating that she had been president of Whitewater as of December 31, 1987 and December 31, 1988.⁷⁵⁸

In December 1988, Mrs. Clinton, in a handwritten note, written on a memorandum announcing payment of interest due on a profit sharing loan, asked someone to "Please get all Whitewater records from my files + get all prior tax returns - call Jim McDougal if necessary."⁷⁵⁹

751 DKRT200042.

752 DKRT200813. Logan made these payments to the Clintons, who then apparently sent the payments to Security Bank.

753 DKRT200067.

754 DKRT101031-35, 101043-44, 400379. The taxes totaled \$1,275.15.

755 DKRT200810.

756 DKRT700178, DKRT700139, DKRT700321-25.

757 *But see* DKRT700172-73 (dated August 24, 1989), which says that McDougal did send a power of attorney. It did not arrive, so Mrs. Clinton asked McDougal for another. DKRT700139-40.

758 DKRT700619 (Dec. 31, 1987), 700618 (Dec. 31, 1988).

759 DKRT400205; DKRT200814-15.

Between late 1988 and 1991, Mrs. Clinton attended to a number of other matters pertaining to Whitewater--foreclosures and the like--but there is no need to summarize them here.⁷⁶⁰ They have little relevance, as they occurred after McDougal's removal from Madison Guaranty.

By her own description, Mrs. Clinton

... spent a great deal of time and money in the last several years [leading up to 1991] trying to understand the corporation's activities and pay for certain of its liabilities such as real estate taxes, corporate franchise fees, and accounting fees incident to tax preparation.⁷⁶¹

D. The Clintons sell their remaining interest to McDougal.

The press reports that, in 1992, Jim McDougal paid the Clintons \$1,000 for their interest in Whitewater.⁷⁶² Jim Blair was to handle the closing, but Little Rock was fogged in, so Vince Foster attended the closing.⁷⁶³ After some complaining by McDougal about the preparation of tax returns (which the Clintons were to prepare, subject to McDougal's approval), Jim McDougal executed the agreement.⁷⁶⁴ McDougal then handed Foster a set of purported board of directors minutes (apparently designed to reflect that day's events). The minutes showed the Clintons, through counsel, ratifying "all actions of the corporation up to and including this meeting. . . ." Foster received the minutes in silence. He "neither concurred with nor objected to the above language in the minutes but instead elected not to make an issue of these inaccuracies."⁷⁶⁵

760 See, e.g., DKRT700178-82, pertaining to foreclosure matters.

761 Letter from Mrs. Clinton to Chris and Rosalee Wade, Charles James, Jim McDougal and Susan McDougal, Apr. 15, 1991, at 1. RIC003635.

762 Documents obtained from McDougal suggest that he and Susan McDougal had assigned all their interest in Whitewater to Jim's mother, Lorene McDougal, in June 1991 in return for \$5,000 received from Lorene McDougal. 212-00006859 through 212-00006864. The documents suggest that the purpose of this transaction was to convey Jim and Susan's interest in the International Paper litigation, *Newgent, et al. v. Great Southern Land Company, et al.*, No. 88-2017 (Pulaski Cty. Chancery Ct.). It is not clear why stock in the Company (as well as in Great Southern Land Company) also went to Lorene McDougal along with the assets involved in the litigation. Less than three months later, Jim McDougal filed a voluntary Chapter 7 bankruptcy petition in Los Angeles. His petition stated that he had no assets save for \$300 in clothes and personal effects. PMS0567-77.

763 RIC003623.

764 RIC003623-24

765 RIC003624-25

The agreement provides that McDougal and the company indemnify and hold harmless the Clintons

from any and all liability arising from or related to [the Clintons'] ownership in or other interest or offices as to the Company, (other than [the Clintons'] personal income tax liability, if any), including, without limitation, any personal guarantees by [the Clintons], or either of them, of obligations to the Company, and any other agreement related to or for the benefit of the Company, and any franchise tax, income tax or other tax liability of the Company, known or unknown, whether existing or assessed or accrued hereafter.⁷⁶⁶

By this time, McDougal had filed for bankruptcy in Los Angeles.⁷⁶⁷ That case remains open.

X. METHODOLOGY AND SCOPE LIMITATIONS.

A. Documentary evidence.

Documents have been obtained from scores of sources. The RTC has issued subpoenas duces tecum to numerous witnesses, including many banks. Extensive bank records, including microfilm, also have been obtained from the Independent Counsel and the Federal Bureau of Investigation pursuant to court orders entered under Rule 6(e) of the Federal Rules of Criminal Procedure.

For the most part, the documents received have been numbered, usually using a letter prefix to identify the source. Thus, the letter prefix of documents cited will, for the most part, identify the source of the cited information.

Letter prefixes used in this report include the following:

<u>Prefix</u>	<u>Source</u>
A	Worthen Bank
BCV	Bank of Cherry Valley
BW	Betsey Wright
CB	Searcy County Bank (Citizens' Bank of Marshall)
CBF	Citizens Bank of Flippin

766 212-00006902 through 212-00006905

767 McDougal filed a voluntary Chapter 7 bankruptcy petition on September 20, 1991 in the United States Bankruptcy Court for the Central District of California. The case is No. LA 91-91907-JD. PMS0552. As noted, the petition stated that McDougal had no assets save for \$300 in clothes and personal effects. PMS0567-77.

CR	RTC Criminal Referrals
DKRT	The Clintons' counsel, David Kendall
FDIC	FDIC
FONB	1st Ozark National Bank (fka Citizens Bank of Flippin)
IC	Independent Counsel
MBT	Madison Bank and Trust
MEUX	<i>Meux v. Earth Movers</i> (lawsuit)
PMS	Documents Pillsbury Madison & Sutro has assembled from various sources (mostly background reading)
RIC	Rose Law Firm
RLF	Rose Law Firm
RTCKC	RTC Kansas City (RTC Investigations)
SBP	Security Bank of Paragould
SN	Sheffield Nelson
SSB	Stephens Security Bank
VCH	FDIC (received 10/29/94)
WRTC	Worthen Bank
212	Jim McDougal
No prefix	Senator Fulbright, R. D. Randolph

B. Interviews.

To date, the following individuals have been interviewed or deposed:

Lisa Aunspaugh
 Babette Baka
 George Betts
 Gary Bunch
 Paul Castleberry
 Andrew Clark
 Jim Clark
 Bonnie Crocheron
 Betty Crum
 Steve Cuffman
 Don Denton
 Vernon Dutton
 Jack Files
 Davis Fitzhugh
 Mary Freeman
 Marshall Grant
 Eugene Pat Harris
 Sarah Hawkins
 Pat Heritage
 Charles James

Robert Keller
 Paul Kerr
 Larry Kuca
 Jim and Susan McDougal⁷⁶⁸
 Lisa McEntire
 Dean Paul
 Robert Palmer
 Charles Peacock III
 George N. Plastiras
 Lisa Raglin
 R. D. Randolph
 John Selig
 Barbara Spears
 James B. Speed III
 Sue Strayhorn
 Tom Tanner
 Tommy Trantham
 Chris Wade
 Seth Ward
 Bob Wilson
 Greg Young

With few exceptions (e.g., Pat Harris, Charles James and the second R. D. Randolph interview), these interviews preceded the document work on Whitewater and the funds-tracing analysis. Therefore, these interviews focused almost exclusively on topics other than Whitewater.

Many of the interviews were tape recorded in the field using simple equipment. The recordings are not all of good quality. In addition, as a cost-savings measure, few of the transcripts were fully proofread against the tapes.

As noted throughout this report, a number of issues, and in particular issues of purpose, intent or knowledge, cannot be resolved from the available documentary evidence. Should the RTC decide to pursue such issues further, additional information might be sought from the following potential witnesses:

Gary Bunch
 Frank Burge
 Charles Campbell
 David Capes
 Kearnie Carleton
 Paul Castleberry
 A. D. Chavis III

768 The RTC attempted to depose the McDougals, but they both invoked their Fifth Amendment privilege against self-incrimination and refused to answer any questions.

William and Hillary Rodham Clintons
 Don Denton
 David Hale
 Blenda Howard
 Marlin Jackson
 John Latham
 Ed and Shirley Meux
 James Patterson
 Theresa Pockrus
 Ron Proctor
 Kirby Randolph
 Maurice Smith
 Steve Smith
 Jack Stephens
 Sue Strayhorn
 Jim Guy Tucker
 Chris Wade
 Betsey Wright
 Terry Wood

C. The work and its limitations.

1. Tucker Alan Inc.

At the request of the RTC and Pillsbury Madison & Sutro, Tucker Alan Inc. was engaged to provide consulting services on this matter. Tucker Alan agreed to perform financial and economic analyses to try to determine if Madison Guaranty funds were used to benefit Whitewater or Whitewater's shareholders and assist in the investigation of certain other Madison Guaranty transactions.

Work Done In Phases:

To better control the work and communicate findings, Tucker Alan performed its work in the following phases:

A. Phase I - Develop a preliminary understanding of Whitewater's affairs at issue:

1. Obtain a general understanding of the Madison Guaranty matter.
2. Review the transactions, books and records of Whitewater.
3. Analyze the available data.
4. Identify additional data desired.

5. Incorporate bank data (i.e., checking accounts of related entities).

B. Phase II - Preliminary review of the relationship, if any, between Whitewater and Madison Guaranty.

1. Identify the original sources of funds comprising what are called the targeted transactions. Targeted transactions are defined as transactions involving funds flowing into Whitewater or the shareholders' Whitewater-related accounts, or pay-down of shareholder loans from McDougal-controlled entities.

2. Determine whether any source individuals or companies--for example, Madison Guaranty--suffered a loss from the targeted transactions.

Tucker Alan Team And Approach

Tucker Alan is a national consulting firm which provides business, management, and litigation consulting services. Tucker Alan is not engaged in the practice of public accounting. Its work was not an audit.

Tucker Alan and its personnel currently provide and have provided significant consulting services to the RTC and its predecessor, the FSLIC, over the last decade.

The RTC, Pillsbury and Tucker Alan team reviewed approximately 900,000 pages of documents and microfilm images related to Madison Guaranty. Approximately 100,000 pages of these documents and images appeared to be relevant to Tucker Alan's analyses.

Limitations

Several limitations to the Tucker Alan effort should be noted:

1. Documentation. The documentation related to Madison Guaranty and Whitewater has proven to be incomplete and, at times, contradictory. Much of it was not fully analyzed and transactions had to be sampled. It is possible that additional bank accounts and records (for example, certain bank accounts of the shareholders and related entities), if analyzed, might yield other relevant facts.

2. Witnesses. As noted above, because review of the Whitewater documents has only recently been completed despite the efforts of all parties to expedite this work, few interviews have focused to any degree on Whitewater. Also, the testimony of some potentially important witnesses has not been available (e.g., the McDougals).

**CONFIDENTIAL—PRODUCED BY THE RTC TO THE
SENATE SPECIAL COMMITTEE**

**MADISON GUARANTY SAVINGS & LOAN
AND
WHITEWATER DEVELOPMENT COMPANY, INC.**

**A SUPPLEMENTAL REPORT
TO THE RESOLUTION TRUST CORPORATION**

Prepared by

**Pillsbury Madison & Sutro LLP
San Francisco, California**

**With financial and economic
analysis support from**

**Tucker Alan Inc.
Seattle, Washington**

December 13, 1995

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I. INTRODUCTION.

On February 4, 1994, the Resolution Trust Corporation ("RTC") issued an Order of Investigation in the matter of Madison Guaranty Savings and Loan, McCrory, Arkansas ("Madison Guaranty"). The Order of Investigation stated (among other things) that the investigation would seek to determine whether

former officers, directors and others who provided services to, or otherwise dealt with, Madison Guaranty . . . its successors or affiliates, may be liable as a result of any actions, or failures to act, in connection with or which may have affected Madison, its successors or affiliates

The Order was issued consistent with 12 U.S.C. § 1441a(b)(14), as modified by the RTC Completion Act of 1993, Public Law 103-204. That statute extended the limitations period applicable to RTC claims arising from fraud, intentional misconduct resulting in unjust enrichment and intentional misconduct resulting in substantial losses to the institution.

The focus of the investigation was shaped by several factors. First, a number of the officers, directors and other people involved with Madison Guaranty and related entities had been released from liability or discharged in bankruptcy, or had only minimal assets to satisfy any judgment that the RTC might obtain against them. Second, the losses associated with a number of the real estate loans and projects were, standing alone, too small to make it likely that litigation could be cost-effective. Third, it became apparent that funds had been transferred among individuals and entities associated with Madison Guaranty or with Madison Guaranty's principal owners, Jim and Susan McDougal, in ways that could not readily be justified or explained.

In light of these factors, (1) the investigation of real estate loans and projects focused primarily on the two transactions presenting the strongest combination of facts and possible sources of recovery (Castle Grande and 1308 Main Street, Little Rock); (2) the investigation of other real estate loans and projects looked for patterns and practices of misconduct that might make it cost-effective and not unduly complex to add these transactions to any litigation that might be brought based on Castle Grande and 1308 Main Street; and (3) the investigation of Whitewater included an effort, using forensic accountants, to trace funds back to Madison Guaranty and, in so doing, to look for patterns and practices of misconduct in the funds transfers among individuals and entities associated with Madison Guaranty or with Jim and Susan McDougal.

The Whitewater part of the investigation resulted in a Preliminary Report on Whitewater dated April 24, 1995 (the "Preliminary Report"). This report

supplements that Preliminary Report. Other reports cover the other parts of the investigation.

The Preliminary Report was based principally upon an intensive review of the available documentation on Madison Guaranty, on Whitewater and on various other entities owned or controlled by the principal shareholders of Madison Guaranty, Jim and Susan McDougal. In addition, the Preliminary Report was based upon depositions and interviews of Jim Clark, David Capes, Steve Cuffman, Don Denton, Pat Harris, Sarah Hawkins, Charles James, Bob Keller, Charles Peacock III, R. D. Randolph, John Selig, Sue Strayhorn, Tommy Trantham and Chris Wade.

Efforts have been made to obtain information from those most closely associated with Whitewater, including the Clintons, Charles James, the McDougals and Chris Wade. Before the completion of the Preliminary Report, James and Wade were interviewed, and the McDougals both declined to be deposed, basing their refusal on the Fifth Amendment. Since the completion of the Preliminary Report, President and Mrs. Clinton each have answered extensive sets of interrogatories, and their counsel, David E. Kendall, has supplemented his earlier document productions. Efforts have been made to interview Chris Wade in more depth. He has refused, basing his refusal on the Fifth Amendment. Efforts also have been made to take statements from David Hale and John Latham but they remain unavailable due to the ongoing Independent Counsel investigation.

Part II of this report supplements the Preliminary Report with newly received evidence regarding the flow-of-funds investigation presented in part VII of the Preliminary Report. This evidence consists chiefly of additional documents obtained from the RTC's Kansas City office and additional interviews of former Madison Guaranty employees Paul Castleberry and Greg Young. The Preliminary Report sought to trace funds from Madison Guaranty to Whitewater but did not determine whether such funds transfers actually damaged Madison Guaranty; the new evidence helps determine whether Madison Guaranty was damaged. For some of the traceable transactions, no basis was found to conclude that the transaction damaged Madison Guaranty. For other transactions (transaction 8 presented in part VII of the Preliminary Report and the \$30,000 McDougal bonus presented in part VIII.A of the Preliminary Report), the new evidence suggests that the transaction did damage Madison Guaranty. Overall, the new evidence tends to confirm the Preliminary Report's observation that the movement of funds among McDougal-controlled entities and from them to Whitewater was not unique, but instead was one example of a broader pattern of funds transfers by the McDougals between and among entities they owned or controlled, apparently motivated by the McDougals' need for funds with which to pay their debts.

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Part II also analyzes whether the RTC can state a claim against anyone based on the Whitewater part of the investigation. The conclusion reached is that no cost-effective claim can be asserted except possibly as to one aspect of transaction 8. This aspect is a subject of the indictment brought by the Independent Counsel against the McDougals and Jim Guy Tucker; it has only a tangential connection to Whitewater. This conclusion does not necessarily mean that the other transactions discussed in the Preliminary Report have been proved legitimate or that the evidence exonerates anyone, it simply means that no basis has been found to sue anyone, or in some instances that litigation would not be cost-effective.

Part III of this report supplements the Preliminary Report with newly received evidence pertaining to the Clintons. This evidence consists chiefly of the interrogatory responses of President and Mrs. Clinton, additional documents received from Kendall in late May 1995 and the documents mentioning Whitewater that Kendall received from the White House in July 1993 (the documents from the office of the late Vincent W. Foster, Jr.).¹ This evidence has been examined against the previously available evidence both for points of consistency and for points of inconsistency. With minor exceptions, the new evidence is consistent with the previously available evidence.

Part III also addresses the questions posed but not fully answered in the Preliminary Report as to whether the Clintons knew about the McDougals' advances to Whitewater, about the source of the funds used by the McDougals to make those advances or about the source of the funds used to make payments on bank debt. The conclusion reached is that no such knowledge can be demonstrated.

Finally, part IV of this report contains recommendations that no further resources be expended on the Whitewater part of the investigation and that a final decision with respect to Transaction 8 be postponed until the criminal proceedings brought by the Independent Counsel are resolved.

1 The documents received from Kendall in May 1995 bear the prefix "DKRT11" (meaning box 11 of the DKRT documents) followed by six digits. The documents received from Kendall in July 1995 (the Foster documents, described by Kendall as "all documents mentioning Whitewater in the files this firm received from the White House on July 27, 1993") bear the prefix "DKSN" followed by six digits. The additional documents received from the RTC's Kansas City office bear the prefix "RTCKC" followed by numbers starting with 44320.

II. SUMMARY AND ANALYSIS OF NEWLY RECEIVED INFORMATION PERTAINING TO THE TRANSACTIONS PRESENTED IN THE PRELIMINARY REPORT.

A. The applicable legal standard.

Congress established the RTC "to contain, manage, and resolve failed savings associations."² Congress gave the RTC the statutory duty of "maximiz[ing] the net present value return from the sale or other disposition of institutions . . . or the assets of such institutions . . . [and] minimiz[ing] the amount of any loss realized in the resolution of cases"³ The RTC fulfills this responsibility in part by bringing civil actions in appropriate cases to recover damages.⁴ Such cases are brought, however, only if there is reason to believe that the litigation will add to the value of the savings association's estate and thus minimize the losses caused by its failure. If there is no reason to believe that litigation will result in a net recovery, then there is no statutory basis to file a case.

This statutory mandate requires the determination of whether the Whitewater part of the investigation has revealed potential claims that can be litigated in a cost-effective manner. Put another way, the issue is whether claims can be stated that have an expected value greater than the expected cost of litigating them.

Part II focuses on the nine transactions presented in part VII of the Preliminary Report plus the \$30,000 McDougal bonus presented in part VIII.A of the Preliminary Report. It starts with damages and then turns to liability.

B. Analysis of damages.

The Preliminary Report stated that, between 1982 and 1986 (the years in which Jim McDougal controlled Madison Guaranty), the McDougals and McDougal-controlled entities advanced \$134,294 to Whitewater.⁵ This occurred through nine separate transactions discussed in parts VII of the Preliminary Report plus the McDougal bonus discussed in part VIII.A of the Preliminary Report.

² Section 101(7) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, 103 Stat. 364.

³ 12 U.S.C. § 1441a(b)(3)(C), as amended by FIRREA § 501.

⁴ 12 U.S.C. §§ 1821(d)(2), (k), (l), as amended by FIRREA § 212.

⁵ Preliminary Report at 4 (footnote omitted).

This figure of \$134,294 places an upper bound on the benefit to Whitewater from funds traceable to Madison Guaranty if liability could be established as to all nine of the transactions plus the bonus. It does not mean, however, that liability, if established, would lead to recoverable damages of this magnitude. There are several reasons for this:

1. The Preliminary Report concluded that \$134,294 was deposited by McDougal and McDougal-controlled entities into Whitewater during the years in which McDougal controlled Madison Guaranty. That \$134,294 was split into four pieces:

a. \$20,752 cannot be traced back to Madison Guaranty because certain Madison Guaranty documents (bank statements, checks and deposit slips) are missing.

b. \$25,520 cannot be traced back to Madison Guaranty, again because certain bank statements, checks and deposit slips are missing, but in addition because money is fungible--the accounts through which this money flowed had sufficient balances so that the source of the funds that eventually reached Whitewater cannot be determined from documentary evidence alone.

c. \$58,022 can be traced back to Madison Guaranty, subject to the qualifications noted in the Preliminary Report. (This \$58,022 covers transactions 1, 3A, 3B, 6, 8 and 9 discussed at pages 71 through 87 of the Preliminary Report.)

d. \$30,000 went directly from Madison Financial into the Whitewater account. (This is the \$30,000 McDougal bonus paid in April 1985 discussed at pages 94 through 102 of the Preliminary Report.)

Of the four pieces, the first two cannot even be traced to Madison Guaranty. Therefore, it cannot be established that this money caused a loss to Madison Guaranty. The other two pieces (the \$58,022 and the \$30,000) can be traced to Madison Guaranty, but this does not mean that these transactions caused Madison Guaranty to lose money, or that the loss to Madison Guaranty is equal to the benefit to Whitewater.

2. The Preliminary Report also concluded that \$39,474 from other sources paid down bank debt related to Whitewater. In a number of instances, bank debt related to Whitewater was paid back in part out of bank accounts other than Whitewater's. In most such instances the payor is known, but in 11 such instances, totaling \$39,474, the payor is unknown. The evidence does not tie these payments to Madison Guaranty, Madison Financial or any of the 39 McDougal-related Madison Guaranty accounts studied as part of the funds-tracing work presented in the Preliminary Report. The source of this money is not known and, accordingly, cannot be tied in any way to Madison Guaranty.

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Therefore, it cannot be established that the money caused Madison Guaranty any loss.

To summarize: the Preliminary Report discussed a total of \$173,768 (\$134,294 + \$39,474). Of this, the evidence does not tie \$85,746 (\$20,752 + \$25,520 + \$39,474) to Madison Guaranty. Another \$30,000 (the April 1985 McDougal bonus) came directly from Madison Financial but did not benefit Whitewater; it simply passed through Whitewater on its way to an unrelated transaction.⁶

This leaves the \$58,022 that is traceable. This \$58,022 is spread among six transactions (nos. 1, 3A, 3B, 6, 8 and 9). Of these six, only one appears to be potentially actionable. That transaction (transaction 8, discussed below) involved a deposit into Whitewater of \$24,456.

The foregoing summary focuses on benefit to Whitewater rather than harm to Madison Guaranty. For most causes of action, however, the best measure of damages would be harm to Madison Guaranty. Using that yardstick, the untraceable \$85,746 remains irrelevant, but not so the \$30,000 McDougal bonus and transaction 8. If the bonus was wrongful, it caused \$30,000 of harm to Madison Guaranty even though it conferred no benefit on Whitewater. Similarly, if transaction 8 was wrongful, it may have caused harm to Madison Guaranty that substantially exceeds the benefit to Whitewater.

The example of transaction 8 illustrates how disbursements out of Madison Guaranty sometimes were significantly larger than the related deposits into Whitewater. This is further illustrated by the following table (the charts listed are attached to this report; all but chart 12A, which is new, were part of the appendix to the Preliminary Report):

6 "To summarize, the evidence suggests that the Deltic/Earth Movers transaction had no substantial relationship to Whitewater. Instead, it appears that \$30,000 flowed through the Whitewater account for reasons that appear unrelated to Whitewater, much as funds destined for Whitewater sometimes flowed through the accounts of other McDougal-controlled entities for reasons seemingly unrelated to those entities. Also, nothing seen to date suggests that Senator Fulbright or the Clintons had any knowledge that the \$30,000 that Senator Fulbright eventually received had any relationship to Whitewater, Madison Financial or Madison Guaranty." Preliminary Report at 102.

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<u>Transaction</u>	<u>Chart</u>	<u>Disbursement Out of Madison Guaranty or Affiliate</u>	<u>Deposit Into Whitewater</u>
1	8	\$ 50,545	\$ 7,500
3A	9	12,650	12,000
3B	10	68,574	5,566
6	11	46,000	1,000
8	12, 12A	900,949	24,456
9	13	112,872	7,500
Bonus	14	<u>30,000</u>	<u>30,000</u>
Totals		\$1,221,590	\$88,022

As can be seen, there is not necessarily any relationship between the dollar amount of the disbursement out of Madison Guaranty and the dollar amount of the associated deposit into Whitewater. There are several reasons for this:

First, the movement of funds among McDougal-controlled entities and from them to Whitewater is not unique but only one example of a broader pattern of funds transfers by the McDougals between and among entities they owned or controlled. In these years, the McDougals lacked the money needed to pay their debts, so they moved money between entities as needed to pay obligations to third persons.⁷ A desire to deposit money into Whitewater for Whitewater's ultimate benefit cannot be assumed to be the primary rationale behind a particular transaction; other debts may have loomed much larger.

Second, a disbursement out of Madison Guaranty cannot be assumed to have resulted in a loss or damages to Madison Guaranty. Typically, these disbursements were not loans that went unpaid. Instead, typically they were payments to vendors or employees (including McDougal).⁸ Because these disbursements were not loans, Madison Guaranty had no expectation of repayment. Therefore, these disbursements caused a loss to Madison Guaranty only if the vendors or the employees were not entitled to receive the

7 Preliminary Report at 5

8 Among the nine transactions and the McDougal bonus, the only disbursement out of Madison Guaranty that took the form of a loan was part of transaction 8. As the table shows, however, the dollar amount of that loan (\$825,000) exceeds the sum of the other disbursements.

money, i.e., if the payments were excessive or undeserved.⁹ As discussed below, that seems to be the case only as to two McDougal bonuses--the \$30,000 bonus paid in April 1985 and another \$75,949 paid in January 1986.¹⁰

For these reasons, the damages (if any) to Madison Guaranty from these transactions cannot be calculated without a review of the theories of liability.

C. Analysis of liability.

The RTC is successor in interest to Madison Guaranty. Therefore, to have a meritorious claim against someone, it must establish (1) liability--that is, a wrongful act--on the part of someone *and* (2) damage to Madison Guaranty caused by that person's wrongful act.

To evaluate whether a transaction has created liability *and* damages, the best place to focus is the means by which money left Madison Guaranty on its way to Whitewater (assuming traceability can be established). The focus is on money leaving Madison Guaranty because this is the point at which a transaction might have resulted in damages to Madison Guaranty.

To illustrate this point, take, for example, transaction 1: Money left Madison Guaranty in the form of payments totaling \$50,545 to West-Ark Construction, a construction company. West-Ark sent \$14,690 to Tucker-Smith-McDougal, and Tucker-Smith-McDougal sent \$7,500 to Whitewater.¹¹ Madison Guaranty did not own West-Ark or Tucker-Smith-McDougal. Therefore, if West-Ark lost \$14,620 or if Tucker-Smith-McDougal lost \$7,500 by this transaction, that is their business; such losses did not affect Madison Guaranty. From Madison Guaranty's point of view (hence the RTC's point of view), the only money that matters is the money that Madison Guaranty disbursed. If that disbursement was legitimate--if West-Ark really had performed legitimate construction services worth \$50,545--then Madison Guaranty lost nothing, even if the transactions among West-Ark, Tucker-Smith-McDougal and Whitewater were wrongful. Thus, as receiver, the RTC need determine whether a given transaction's disbursements out of Madison Guaranty (a) were wrongful *and* (b) damaged Madison Guaranty.

Applying these principles, this section analyzes transactions 1, 3A, 3B, 6, 8 and 9 discussed at pages 71-87 of the Preliminary Report plus the \$30,000

9 A payment to a vendor may have been completely justified: The vendor may have performed legitimate services at a fair price. If so, the payment caused no damage to Madison Guaranty even if some of the money later ended up in Whitewater.

10 Also as discussed below, there is no substantial evidence that the other transactions were improper or caused a loss to Madison Guaranty.

11 See chart 8

McDougal bonus discussed at pages 94-102 of the Preliminary Report.¹² Together, these transactions account for all of the potential damages analyzed above.¹³

In the Preliminary Report, these transactions were discussed chronologically, starting with transaction 1 in August-September 1984 and ending with transaction 9 in October-November 1985. For analytical purposes, however, it makes more sense to group these transactions by payee--that is, by the person or entity who first received the money that left Madison Guaranty. If that person or entity was entitled to the money, then Madison Guaranty was not damaged by the transaction. If so, no further analysis is needed: Without damages, the RTC has no claim.

1. Transactions benefiting West-Ark Construction.

West-Ark Construction, which was owned by Jim McDougal's old friend R. D. Randolph, performed construction services at a number of Madison Financial's real estate projects, including Maple Creek. Transactions 1 and 3A involve payments to West-Ark.

a. Transaction 1 (chart 8), August-September 1984.

As noted above, and as chart 8 illustrates, Madison Guaranty sent \$50,545 to West-Ark Construction, a construction company. At approximately the same time, West-Ark sent \$14,690 to Tucker-Smith-McDougal, and Tucker-Smith-McDougal sent \$7,500 to Whitewater. As chart 7 illustrates, Whitewater used the \$7,500 to make a \$7,500 payment to the Bank of Cherry Valley.

In August and September 1984, the \$50,545 left Madison Financial in two checks to West-Ark Construction.¹⁴ One check, dated August 28, 1984, was for \$20,545; the other check, dated August 31, 1984, was for \$30,000. Neither check states its purpose. Both payments were posted to Madison Financial's general ledger in account 2300, "Reserve for Development."¹⁵

12 Transactions 2, 4, 5 and 7 can be ignored. None was traceable back to Madison Guaranty. There is no evidence that any caused a loss to Madison Guaranty.

13 The transaction numbers correspond to the transaction numbers on chart 7.

14 IC14170, IC14773. Both were signed by Paul Castleberry. Castleberry Interview, Nov. 2, 1995, at 14-15.

15 RTCKC44320. Such accounts typically were used to hold expenditures on developing real estate projects that occurred before lot sales began. For accounting purposes such expenditures were capitalized (i.e., added to the basis of the real estate).

An unsuccessful attempt was made to find West-Ark's invoices, Madison Financial's journal vouchers and other documents backing up these two payments. RTC Investigations, which conducted the search, states that "the accounts payable folder for 1984 for this general ledger account [is] missing from the accounts payable information."¹⁶ Such folders typically contain invoices and journal vouchers.

Without such documents, little can be said about the nature and propriety of these payments. At the time, however, West-Ark was performing construction work (typically grading lots and other bulldozing activities) for Madison Financial at several projects.¹⁷

To the extent that the checks or deposit slips mentioned above were signed, they were signed by Madison Financial's controller, Paul Castleberry, who was interviewed twice. Castleberry served as controller of Madison Financial from mid 1983 until he was terminated in June 1985.¹⁸ This was Castleberry's first full-time job after college; while in night school at the University of Little Rock he had worked at Savers' Savings as an accounting clerk.¹⁹ Among his duties, Castleberry wrote checks for Madison Financial.²⁰ He says record-keeping at Madison Guaranty was "kind of sloppy" when he arrived.²¹

Q. And could you tell me what the books of Madison Financial were like when you started.

A. When I first started, they were kind of shoebox-like. They were disorganized, not really any type of, per se, records kept. It was a real mess.²²

McDougal and John Latham (Madison Guaranty's CEO) often gave Castleberry quite detailed instructions. When Castleberry started to organize Madison Financial's records, they helped Castleberry set up the accounts

16 Letter from Albert Kohl to Bruce A. Ericson, Aug. 11, 1995, at 1.

17 Randolph Interview, Mar. 9, 1995, at 24:21-27:10

18 Paul Castleberry Interview, Apr. 26, 1994, at 1. Greg Young replaced him in the spring of 1985. *Id.* at 4. Young also was interviewed twice.

19 *Id.* at 1.

20 Latham and Young also wrote some checks. Castleberry Interview, Nov. 2, 1995, at 9-10

21 Castleberry Interview, Apr. 26, 1994, at 18.

22 Castleberry interview Nov 2 1995 at 6

because Castleberry had no experience with a real estate subsidiary.²³ Then, as invoices came in, most of the time McDougal and to a lesser extent Latham would tell Castleberry to which accounts he should post the transaction.²⁴

When an invoice for a payable came in, McDougal or Latham would approve it, sometimes just orally.²⁵ Castleberry would cut the check, post the transaction to the accounts and file the invoice.²⁶ Sometimes McDougal or Latham would ask Castleberry to cut a check without presenting him with an invoice; Castleberry cannot remember how often this happened.²⁷

After I was there - I will say this - I don't know where the records are now, but when I was there, the records were right. Because I kept up with, like I said, everything . . . I had a essentially lots - there might be sometime or something that Latham or McDougal might say I need - write me a check for \$100 - we've gotta pay some advertising - I gotta pay somebody to do some work - labor - some contract labor or something - there wouldn't - you wouldn't get an invoice made for something like that - but, if it came from a corporation or something - there was generally - there was an invoice. Now, I can't tell you whether that invoice was legit or not. I don't know that. But, we had - when I was there, I tried to do my best to see that we had an invoice for anything, but . . .²⁸

Castleberry was specifically asked about the payments to West-Ark summarized above.²⁹ He confirmed that he signed the checks but emphasized that he did so at the instance of Latham.³⁰ Castleberry could not say why West-Ark had been hired, how its contracts were negotiated, whether the price was fair or whether the work was performed. McDougal and Latham supervised such matters.³¹

23 *Id.* at 6-7.

24 *Id.* at 35-36. This conflicts with McDougal's statement that he was not a hands-on manager when it came to the paperwork. See Preliminary Report at 45-47.

25 Castleberry Interview, Nov. 2, 1995, at 11.

26 *Id.* at 11-13.

27 *Id.* at 13-14.

28 Castleberry Interview, Apr. 26, 1994, at 18.

29 Castleberry Interview, Nov. 2, 1995, at 14-26, 36-38.

30 *Id.*

31 *Id.* at 23-26.

b. Transaction 3A (chart 9), November 1984.

As chart 9 illustrates, Madison Financial sent \$12,650 to West-Ark, West-Ark sent \$12,000 to Flowerwood Farms, and Flowerwood Farms sent \$12,000 to Whitewater. As chart 7 illustrates, Whitewater used the \$12,000 to make part of an \$18,000 payment to Citizens Bank of Flippin (transaction 3B contributed the rest of the money).

From Madison Financial's point of view, transaction 3A is similar to transaction 1, except that the available documentation is more complete. Once again, Madison Financial sent two checks to West-Ark.³² One check, dated October 23, 1984, was for \$6,000; the other check, dated October 30, 1984, was for \$6,650. Once again, neither check states its purpose.

Both payments were posted to Madison Financial's general ledger but to a different account: account 1600, "Houses at M.C." (Maple Creek Farms).³³ This time check stubs and West-Ark invoices were located. The check stubs confirm the payee (West-Ark) as well as the date, check number, amount and general ledger coding for each payment.³⁴ A single West-Ark invoice for \$12,650, dated September 12, 1984, supports both payments.³⁵ Addressed to Madison Financial, the invoice bears the description "2900 bales of straw seed, fertilizer and preparation of sites application [\$]8980.00" and "brush hogging and trimming [\$]3670.00."³⁶

West-Ark performed construction work for Madison Financial at several projects, including Maple Creek.³⁷ Again, Paul Castleberry could shed no light on the bona fides of these transactions; McDougal and Latham supervised the work.³⁸

32 IC15207, IC25598. Both were signed by Paul Castleberry. Castleberry Interview, Nov. 2, 1995, at 20.

33 RTCKC44321. Castleberry Interview, Nov. 2, 1995, at 21-22.

34 RTCKC44322, RTCKC44323.

35 RTCKC44324. The invoice was a generic form, on which "West-Ark" was typed, but that is consistent with West-Ark's style of operation.

36 *Id.* Brush or bush hogging is mowing a field using a mower hooked to a tractor. Castleberry Interview, Nov. 2, 1995, at 23.

37 Randolph Interview, Mar. 9, 1995, at 26.13-21.

38 Castleberry Interview, Nov. 2, 1995, at 23-25.

c. Analysis.

As a plaintiff, the RTC would bear the burden of proof in any case it filed. In particular, the RTC could not file a complaint unless it could certify that

the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery . . .³⁹

Ten years after the fact, not all of the West-Ark documentation can be located. Even so, the evidence does not provide any substantial grounds to challenge the performance or pricing of West-Ark's services, or any substantial basis for claiming that the transactions caused damage to Madison Guaranty.⁴⁰ Therefore, the evidence does not support the assertion of a cause of action against anyone based on transaction 1 or transaction 3A.⁴¹

2. Transactions benefiting Madison Marketing.

Madison Marketing placed advertisements for McDougal-controlled entities in return for a 15 percent fee; the documents underlying the Madison Marketing invoices are consistent with this understanding.⁴² Madison Marketing was owned by Susan McDougal, who operated it out of Madison Guaranty's Little Rock office, in which Castleberry worked.⁴³ Transactions 3B and 9 involve payments to Madison Marketing.

a. Transaction 3B (chart 10), November 1984.

As chart 10 illustrates, Madison Guaranty and Madison Financial made eight payments to Madison Marketing totaling \$68,574; and Madison Marketing sent \$5,566 to Whitewater. As chart 7 illustrates, Whitewater used the \$5,566

³⁹ Fed. R. Civ. P. 11(b)(3).

⁴⁰ Given the amounts at issue, further investigation in an attempt to determine whether these construction services were reasonably priced would seem to be a waste of money. Therefore, it is not recommended.

⁴¹ This does not necessarily mean that the transactions have been proved legitimate or that the evidence exonerates anyone; it simply means that no basis has been found to sue anyone. This comment applies with equal force to transactions 3B, 6 and 9 (discussed below).

⁴² Preliminary Report at 78-79; PMS0477 (1986 FHLBB Report of Examination); Castleberry Interview, Nov. 2, 1995, at 26-30.

⁴³ Castleberry Interview, Nov. 2, 1995, at 26-27. Castleberry does not know who kept Madison Marketing's books; he did not. *Id.* at 28-30.

to fund the rest of a \$18,000 payment to Citizens Bank of Flippin (as noted above, \$12,000 came from transaction 3A).

In November 1984, money left Madison Guaranty and Madison Financial in the form of eight payments to Madison Marketing: \$7,154, \$24,156 and \$1,607 on November 2, 1984; \$5,932 on November 9, 1984; \$3,929 on November 13, 1984; \$60 on November 18, 1984; and \$25,361 and \$375 on November 19, 1984.⁴⁴

Transaction documents were located for two of the payments: the \$1,607 payment on November 2, 1984 and the \$5,932 payment on November 9, 1984.⁴⁵ Deposit slips were located but neither deposit slip was signed, nor did either state the purpose of the transaction.⁴⁶ In addition, check stubs, Madison Marketing invoices and supporting documentation were located:

For the \$1,607 transaction, the Madison Marketing invoice lists three vendors: a radio station and two publications.⁴⁷ Backing up the Madison Marketing invoice is an invoice from each vendor.⁴⁸ In each case, the total on the vendor's invoices plus 15 percent equals the amount shown on the Madison Marketing invoice. All four documents state that the services relate to the Green Tree Farms project, not Fair Oaks.⁴⁹

For the \$5,932 transaction, the Madison Financial check stub has a manual notation, "#1116 N/R - Fairview per J.M."⁵⁰ The Madison Marketing invoice lists four third-party vendors. Invoices from three of the four (all radio stations) are attached; each relates to Green Tree Farms.⁵¹ The missing documentation relates to "Sherwin-Williams \$114.60."⁵²

44 IC16408, IC16454, IC16506, IC16610, IC25441, IC25529, IC25571.

45 Letter from Albert Kohl to Bruce A. Encson, Aug. 11, 1995, at 1-2.

46 IC16396; IC25583. Bank statements for Madison Marketing's account are not available for November 1984.

47 RTCKC44332. These entities have no known ties to the McDougals. The Madison Marketing invoice supporting this payment is dated October 25, 1987. The year appears to be in error; the underlying invoices are all dated in 1984.

48 RTCKC44333-35.

49 RTCKC44332-35.

50 RTCKC44326. The "J.M." stands for Jim McDougal. As noted above, Jim McDougal directed that this payment be posted to the general ledger in this manner.

51 RTCKC44327-30.

52 RTCKC44327.

Both payments were posted to Madison Financial's general ledger to account 1116: "Notes Receive - Fairview."⁵³ (The account's name was later changed to "Fair Oaks.") Posting a payable to a note receivable account is unusual. Castleberry explained that he charged the \$5,932 payable to this account because McDougal told him to do so. So far as Castleberry understood it, McDougal's theory was that

there was a note -- or that there was to be a note that -- in which one of the partners -- or a partner owned that note, as far as would make payments on that note once the development was completed.⁵⁴

Put another way, McDougal's theory for not expensing these payables was that ultimately the partner would reimburse Fairview for the work performed by Madison Marketing; therefore, in the final analysis, Madison Financial would not be out of pocket.⁵⁵ On this theory, the disbursements would not be treated as expenses. Therefore, they would not decrease Madison Financial's net income (or, as shall be seen below, McDougal's and Latham's bonuses).

b. Transaction 9 (chart 13), October-November 1985.

As chart 13 illustrates, Madison Guaranty and Madison Financial made three payments totaling \$112,872 to Madison Marketing; and Madison Marketing sent \$7,500 to Whitewater. As chart 7 illustrates, Whitewater used the \$7,500 to make a \$7,322 payment to Security Bank of Paragould.

Transaction 9 resembles transaction 3B. Money left Madison Guaranty and Madison Financial in the form of three deposits into Madison Marketing: \$48,183 and \$37,579 referenced on a deposit slip dated October 25, 1985; and \$27,110 referenced on a deposit slip dated October 29, 1985.⁵⁶ The deposit slips are unsigned and do not state the purpose of the deposits, although they do list the entities on behalf of which the money ostensibly was paid.⁵⁷

53 RTCKC44325.

54 Castleberry Interview, Nov. 2, 1995, at 31-33. Many other disbursements that appear to be payables also were posted to this account, e.g., Southwestern Bell, \$84.83, Coca-Cola Bottling Co., \$76.50, Rabbit Feed Store, \$67.40. RTCKC44325.

55 Castleberry Interview, Nov. 2, 1995, at 32-35. Castleberry has no idea whether there were such notes, or whether they eventually were paid; he simply followed McDougal's instructions. *Id.*

56 IC06632, IC07427

57 IC06632, IC07427

Additional documentation has been located for the last two of these payments.⁵⁸ For both, the documents include entries into Madison Financial's general ledger, check stubs and Madison Marketing invoices with underlying third-party vendor statements.

The payment of \$37,579 was recorded into Madison Financial's general ledger in account 2300--"Res. For Dev.--Maple Crk Farms."⁵⁹ This type of account accumulates capitalized direct project costs for Maple Creek Farms. This coding is consistent with Madison Marketing's invoice for these costs.⁶⁰ Madison Marketing vendor receipts for this invoice, while not complete, are generally consistent with other Madison Marketing payments, including the addition of a 15 percent mark-up on these costs.⁶¹ These expenses covered television, radio and print advertising for the project.⁶²

The payment of \$27,110 is supported by similar documentation. This payment is distributed on Madison Financial's general ledger in many places: reserve for development accounts for Eden Park (account 2306 for \$7,439.35) and Lake Faircrest (account 2307 for \$12,914.08); and various advertising expense accounts for Fair Oaks (account 6691-3 for \$4,602.36), Brittany Point (account 6691-4 for \$71.24) and Timberline (account 6691-5 for \$2,082.85).⁶³ The underlying invoice and vendor support generally appears consistent with these classifications. The documentation is of the same type and detail as the other Madison Marketing payments.⁶⁴

The checks for this transaction, unlike transactions 1, 3A and 3B, were signed by Greg Young. In mid 1985, Greg Young replaced Paul Castleberry, who was fired.⁶⁵ Young, an accountant, had worked for the firms now known

58 Letter from Albert Kohl to Bruce A. Ericson, Aug. 11, 1995, at 2.

59 RTCKC44355.

60 RTCKC44403

61 RTCKC44404-26

62 Whether these types of costs should be capitalized or expensed on Madison Financial's books is irrelevant for purposes of this analysis.

63 RTCKC44356-57

64 RTCKC44358-400

65 Castleberry interview, Apr. 26, 1994, at 4, 19-20. Castleberry was told he "wasn't the right type individual for their organization"; the firing came as a shock. *Id.* at 19-20. Castleberry once had refused to make an accounting entry that Latham wanted. This occurred within six months of Castleberry's firing, but Castleberry does not know if the incident led to his firing. *Id.* at 21-25. Young, who was Castleberry's boss and had started to handle some of

(continued...)

as KPMG Peat Marwick and Deloitte & Touche before joining Madison Guaranty in October 1984.⁶⁶ Young continued to work at Madison Guaranty until July 1988.⁶⁷

In general, Young claims that accounts payable requests had backup information and supporting documentation, although on occasion McDougal would make oral requests for checks and supply some form of invoice later.⁶⁸ These oral requests generally pertained to payables to West-Ark, Madison Marketing or other related entities.⁶⁹ Young understood that "all of the advertising dollars ran through Madison Marketing as the agent or contractor or whatever it was. They got an agency fee for placing all this advertising."⁷⁰ He does not think that Madison Marketing actually produced the advertisements itself.⁷¹

c. Analysis.

The Madison Financial payments to Madison Marketing appear adequately documented. While backup documentation was not available for all payments, the files where available include third-party documentation justifying the amount and nature of the expenses. Therefore, the evidence does not support the assertion of any cause of action based on the theory that these expenditures themselves damaged Madison Guaranty.⁷²

Nonetheless, Madison Marketing's entitlement to the 15 percent markup might be questioned on the theory that these funds should have gone to Madison Guaranty rather than to an entity owned by Susan McDougal personally. In situations such as this, where a person with a close connection to a corporation (a "corporate insider") profits from business dealings with that

65(...continued)

Castleberry's responsibilities before Castleberry left, does not know why Castleberry was fired. Young Interview, Nov. 2, 1995, at 6-9.

66 Young Interview, May 13, 1994, at 1-2; Young Interview, Nov. 2, 1995, at 4-6.

67 Young Interview, May 13, 1994, at 2.

68 *Id*

69 *Id*

70 Young Interview, Nov. 2, 1995, at 10-11.

71 *Id*

72 To the extent that these expenditures were posted to "notes receivable" accounts, there may be an accounting issue. That, however, seems better addressed as an aspect of McDougal's bonuses, which are discussed below.

corporation, the law asks several questions. The first is whether the corporate insider should even operate a business that the corporation itself might own. The second is whether the particular business arrangements between the corporate insider and the corporation violate the corporate insider's fiduciary duties to the corporation.

The first question is analyzed under the "corporate opportunity" doctrine. This doctrine, which Arkansas recognizes, holds:

The law imposes a high standard of conduct upon an officer or director of a corporation, predicated upon the fact that he has voluntarily accepted a position of trust and has assumed the control of property of others. . . . Such a person occupies a fiduciary relation to his corporation and "may not acquire, in opposition to the corporation, property in which the corporation has an interest or tangible expectancy or which is essential to its existence." This doctrine of corporate opportunity is but one phase of the rule of undivided loyalty on the part of corporate fiduciaries. It does not preclude a corporate fiduciary from engaging in a distinct enterprise of the same general class of business as that which his corporation is engaged, so long as he acts in good faith.⁷³

The corporate opportunity doctrine is principally a rule of disclosure. A corporate fiduciary whose activities are known to and accepted by the corporation will not run afoul of the doctrine.⁷⁴ There seems to have been no secret as to Susan McDougal's ownership of Madison Marketing; for example, Castleberry and Young both knew it.

Even if the McDougals did not disclose their interest to other directors, the corporate opportunity doctrine does not preclude a corporate fiduciary from engaging in a distinct enterprise of the same general class of business as that in which his corporation is engaged so long as he acts in good faith.⁷⁵ Courts frequently employ a "line of business test" to determine whether a given opportunity belonged to the corporation. Under this test, the corporate opportunity doctrine typically is invoked where there have been egregious

73 *Raines v. Toney*, 228 Ark. 1170, 1179, 313 S.W.2d 802, 808 (1958) (citations omitted). See also *Taylor v. Terry*, 279 Ark. 97, 98-99, 649 S.W.2d 392, 392-93 (1983).

74 3 William Meade Fletcher, *Cyclopedia of the Law of Private Corporations* § 862, at 304 (rev. ed. 1994).

75 *Raines v. Toney*, 228 Ark. at 1179, 313 S.W.2d at 808; see also *Taylor v. Terry*, 279 Ark. at 98-99, 649 S.W.2d at 392-93.

attempts to spirit business away from a corporation.⁷⁶ The doctrine does not typically reach a business relationship with a vendor in another line of business. An advertising agency is not a business "essential to [the] existence" of a savings and loan, nor is an advertising agency "of the same general class of business as that [...] which" a savings and loan or its real estate service corporation is engaged. Therefore, it seems unlikely that Madison Marketing took an opportunity that belonged to Madison Guaranty or Madison Financial.⁷⁷

The second question is whether, even if Susan McDougal could properly own Madison Marketing, her status as a corporate insider made the particular arrangement between Madison Guaranty and Madison Marketing improper. The general rule is that corporate insiders may not profit improperly from their relationship with the corporation. Therefore,

a director must account to the corporation or the shareholders for any profits made by the director out of corporate transactions, where the director either concealed or did not disclose the extent to which he or she was making a profit out of the transaction.⁷⁸

This rule does not mean, however, that a director or other insider is forbidden from having an interest in a contract that is fair and in the interest of the corporation. Instead, it means that the RTC would have the burden of proving that the McDougals tried to conceal their interest in Madison Marketing; if satisfied, the burden would shift to the McDougals to establish that the contract was fair and made in good faith.⁷⁹

Even if the RTC could prove secrecy, the McDougals might well meet their burden. Madison Marketing received no more than the going rate of 15 percent; had an independently owned advertising agency placed the

76 This is true of both *Raines* and *Taylor*. In *Raines*, for example, the defendant/appellant attempted to take away all the business of the corporation to which he owed a fiduciary duty and transfer all that business to a partnership he had set up.

77 An additional distinguishing factor between the typical corporate opportunity case and the facts presented here is the real question here of whether Madison Guaranty was deprived of the opportunity. If Madison Guaranty could have chosen at any time to place its own advertisements, then the opportunity was never lost to it.

78 Fletcher, *supra*, § 884, at 363

79 Fletcher, *supra*, § 884.70, at 376-77, see also *Home Bros., Inc. v. Ray Lewis Corp.*, 292 Ark. 477, 481, 731 S.W.2d 190, 193 (1987) (recognizing that when contracts between a corporation and its directors are involved, "the burden is upon those claiming under them to prove that they are made in good faith and fair to the corporation").

advertisements, it would have charged a similar commission.⁸⁰ The 1986 FHLBB Report of examination points out that "[t]he actual work of advertising, such as the design and production of commercials and providing air time or newspaper space, appears to be performed by others."⁸¹ That might have been true, however, even if an independently owned advertising agency had handled the job. Therefore, unless Madison Marketing manifestly fell down on the job, it seems doubtful that the RTC could demonstrate that the arrangement was unfair to Madison Guaranty. This issue aside, there is no basis to question the expenditures on advertising, at least in the transactions for which documents can be located.

3. Transaction benefiting Bill Henley: Transaction 6 (chart 11), January 1985.

As chart 11 illustrates, Madison Financial paid \$46,000 to Madison Real Estate; Madison Real Estate paid \$46,000 to Bill Henley; Bill Henley paid \$28,500 to Flowerwood Farms; and Flowerwood Farms paid \$1,000 to Whitewater. As chart 7 illustrates, Whitewater used the \$1,000 to pay \$1,000 to Citizens Bank of Flippin.

Bill Henley (who is one of Susan McDougal's brothers) worked as a commissioned real estate salesman for Madison Financial. The 1986 FHLBB Report of Examination indicates Bill Henley was paid \$427,683 in commissions between 1983 and 1986. According to this Report, "a substantial portion of these funds were advances against commissions to be earned on future land sales."⁸² Transaction 6 involves one payment of commissions to Bill Henley.

In January 1985, money left Madison Financial in the form of a check for \$46,000 to Madison Real Estate.⁸³ Madison Real Estate paid \$46,000 to Bill Henley. The \$46,000 reached Bill Henley's account on January 10, the day before the check to Henley and the check from Madison Financial were posted to Madison Real Estate's account; both were posted on January 11.⁸⁴

80 A number of the invoices from television stations explicitly state the gross billing, the "agency commission" and the net amount due. E.g., RTCKC44408-20.

81 PMS0477.

82 PMS0476

83 The Madison Financial check to Madison Real Estate is dated January 9, 1985 and was signed by Paul Castleberry. IC17929. A deposit slip dated January 10, also signed by Castleberry, deposited the check into Madison Real Estate's account. IC17776. The deposit was posted to Madison Real Estate's account on January 11. IC01568. The statement was sent to Madison Real Estate c/o Castleberry.

84 IC01568, IC17837. See generally Castleberry Interview, Nov. 2, 1995, at 39-47.

There is no backup documentation (accounts payable folder or supporting documentation) for this transaction.⁸⁵ There is, however, an entry into Madison Financial's general ledger for \$46,000, coded into account 2016, "Accts. Pay. - Comm. To B.H."⁸⁶ This entry creates a debit balance of \$46,650.68, which appears to be an amount due (receivable) from Bill Henley. This suggests that Madison Financial prepaid commissions to Bill Henley.⁸⁷

Paul Castleberry said that commissions were prepaid but not by more than a few days. He said that sometimes Jim McDougal would direct him to pay commissions to Henley. Typically this would occur only if a parcel had been sold but the paperwork had not yet been arrived at the office.⁸⁸ So far as Castleberry knew, this payment was not a disguised loan to Henley. Instead, he understood that a sale had been made but the paperwork had not yet arrived.⁸⁹

There might be liability if the underlying sales were made to insiders on uneconomical terms and therefore were not bona fide.⁹⁰ Such a theory would require fairly elaborate proof as to the terms of various transactions and the rationale for the transactions. Even if the commissions were proved wrongful, however, the commissions could not be recovered from their recipient, Bill Henley, because he has been released.⁹¹

85 Letter from Albert Kohl to Bruce A. Ericson, Aug. 11, 1995, at 2.

86 RTCKC44338. There is no voucher backing up the general ledger entry. Letter from Albert Kohl to Bruce A. Ericson, Aug. 11, 1995, at 2.

87 RTCKC44338.

88 Castleberry Interview, Nov. 2, 1995, at 41-47.

89 *Id.* at 45.

90 See 1986 FHLBB Report of Examination, PMS0477.

91 Between 1987 and 1989, Bill Henley was adverse to Madison Guaranty and Madison Financial in six actions, at least one of which pertained to his real estate commissions. On April 28, 1989, Bill Henley, Glenda Henley, Madison Guaranty and Madison Financial executed a global Settlement Agreement resolving all six actions. Among the six actions was one that sought commissions. *Billy Henley v. Madison Financial Corporation, et al.*, No. 87-422 (Union Cty. Cir. Ct.), *after removal*, No. 89-1040 (W.D. Ark.). The mutual release attached to the Settlement Agreement provided for the dismissal with prejudice of this action and the release by all parties of "any and all claims . . . known or unknown . . . relating to" this action (as well as the other five actions). Settlement Agreement at 19, 25-26. These releases would bar the RTC from suing Henley even if the commissions were proved wrongful.

4. Transactions benefiting the McDougals (charts 12, 12A and 14).

There are four such transactions, three benefiting Jim McDougal and one benefiting Susan McDougal. Madison Financial paid Jim McDougal \$20,000 in February 1985, \$30,000 in April 1985 and \$75,949 in January 1986; all three payments are deemed bonuses by what purport to be board minutes. Through the fourth transaction, Madison Guaranty may indirectly have financed a loan to Susan McDougal of \$300,000 made by Capital Management Services, Inc. in April 1986.

The \$20,000 bonus and the \$30,000 bonus are not part of the nine transactions discussed in part VII of the Preliminary Report, but the \$30,000 bonus was discussed in part VIII because it was made payable to Whitewater. The \$75,949 bonus and the \$300,000 loan are part of transaction 8.

a. The \$30,000 bonus paid in April 1985 (chart 14).

As chart 14 illustrates, Madison Financial paid \$30,000 to Whitewater. The money cured an overdraft created by Whitewater's \$30,000 payment to Earth Movers, Inc. Earth Movers had used Whitewater's check to buy a cashier's check for \$30,000 that was sent to Senator Fulbright, who accepted it as the first of two payments for a parcel of land west of Little Rock that he had agreed to sell to Earth Movers.

The Preliminary Report discussed this transaction at some length.⁹² New interviews and newly obtained accounting documents help augment the discussion in the Preliminary Report, particularly with respect to the characterization of Madison Financial's \$30,000 payment to Whitewater as a bonus.

Madison Financial's minutes: To understand the evidence as to this putative bonus, it is necessary to understand the history of the minutes that purport to authorize it. As noted in the Preliminary Report, these minutes are of dubious authenticity, were created many months after the fact and have been found in several inconsistent versions. According to Patricia Heritage, who prepared the minutes under John Latham's direction, the Madison Financial board did not hold formal meetings, but the minutes were prepared as if a

92 Preliminary Report at 98-101

meeting had been held.⁹³ One of the directors, Greg Young, did not know he was a director.⁹⁴

Latham directed Heritage to prepare the minutes in anticipation of the FHLBB examination that began in March 1986.⁹⁵ Heritage started creating minutes covering putative meetings held from January 1985 onward. The work of drafting these minutes began in late February 1986, because the examiners were expected to arrive on March 1, 1986.⁹⁶ Latham instructed Heritage "that the things that needed to be covered were any bonuses that the corporation had authorized top officers, various other things."⁹⁷ Heritage began to research corporate records to see what Madison Financial had done.⁹⁸ She also checked with Greg Young--"he was CFO, so he would have known when people were paid bonuses."⁹⁹ After taking these steps, she prepared draft minutes for Latham's review. Latham frequently made changes to the drafts.¹⁰⁰ When the minutes were completed, Latham signed the minutes himself but Sue Strayhorn probably signed Jim McDougal's name.¹⁰¹ The FHLBB examiners asked to see the minutes soon after their arrival, but they

93 Hentage Deposition, Feb. 27, 1991, at 12-14; IG Ex. III-149, at 12-14. Heritage worked at the time as John Latham's assistant. She later completed law school at night, graduating with honors from the University of Arkansas at Little Rock. After that she worked for a time for the Rose Law Firm in its labor law department. Heritage Deposition at 4-8; IG Ex. III-130, at 4-8. As of 1994, she worked as a deputy city attorney for the City of Little Rock. IG Ex. III-152, at 1.

94 IG Ex. III-149, at 15. Young did not learn of his status as a director until after the FHLBB examination that started in March 1986. He said, "I've never attended a Madison Corporation Board of Directors' meeting, ever." Young Interview, Nov. 2, 1995, at 15-17.

95 IG Ex. III-149, at 13-14.

96 IG Ex. III-151, at 6 (RIC038625); III-152, at 2. See also Young Interview, Nov. 2, 1995, at 20-21.

97 *Id.* at 15. Compare IG Ex. III-152, at 2, where Hentage says that Latham's instructions were to focus on "major decisions"--investments in major developments and bonuses.

98 IG Ex. III-152, at 3.

99 IG Ex. III-149 at 15. See also IG Ex. III-151, which consists of notes of interviews of Hentage from 1986, 1987 and 1990.

100 IG Ex. III-152, at 2.

101 IG Ex. III-151, at 6, III-152, at 3. Heritage added that McDougal would allow a lot of people to sign his name, but Latham was very particular about it and would not let anyone sign his name. IG Ex. III-151, at 6. Heritage also told how McDougal once asked her to sign his name to a deed, explaining that it was a waste of his time to be signing documents such as this. IG Ex. III-152, at 3.

never asked Heritage when the minutes had been prepared or by whom.¹⁰² For their part, McDougal and Strayhorn moved from Madison Guaranty's offices out to Maple Creek just before the examination began. Strayhorn testified to this in 1988:

Q. Do you know why he moved?

A. Yes.

Q. Why?

A. He did not want to be accessible to the examiners to have to answer any questions at that time.¹⁰³

The bonus plan for 1985: The first mention of bonuses for 1985 appears in the minutes for a board meeting supposedly held on January 21, 1985. There is a draft of these minutes¹⁰⁴ as well as a final signed version.¹⁰⁵ The final signed version reads:

RESOLVED, that the Corporation pay to the following persons salaries and bonuses in the amounts set forth below for the fiscal year beginning January 1, 1985: Jim McDougal - \$100,000, plus 10% of the net profits¹⁰⁶

The \$20,000 payment: The next mention of a bonus for McDougal appears in minutes dated February 7, 1985. Again, there is a draft plus a signed final version.¹⁰⁷ The draft awards McDougal \$20,000 "in recognition of

102 IG Ex. III-152, at 3.

103 Reporter's Transcript of Trial of *Seth Ward v. Madison Guaranty Savings and Loan Association*, No. 87-7580 (Pulaski Cty. Cir. Ct.), at 196-97. The Independent Counsel's indictment of McDougal charges that McDougal and his alleged co-conspirators structured transactions and generated fraudulent paperwork, particularly in late 1985 and early 1986, so as not to attract the attention of auditors and bank examiners and regulators. Indictment filed Aug. 17, 1995 in *United States v. James B. McDougal, et al.*, No. LR-CR-95-173 (E.D. Ark.) (hereinafter, "McDougal Indictment"), ¶ 10, at 7.

104 RTCKC37408-09.

105 IG Ex. III-50, at 1.

106 IG Ex. III-50, at 1. Young understood this to be McDougal's bonus arrangement for 1985. Young does not recall McDougal receiving any large bonuses in 1984, but Young did not start handling payroll until the end of 1984. Young Interview, Nov. 2, 1995, at 13-14.

107 The draft is RTCKC37420-21; the bonus provisions are handwritten in Patricia Hentage's handwriting. Young Interview, Nov. 2, 1995, at 17. The final version is RTCKC46950-51.

the high profits (\$391,000) earned by the Service Corporation."¹⁰⁸ The final version awards McDougal \$50,000 "in recognition of his work which allowed the Service Corporation to earn outstanding profits for the past two years."¹⁰⁹ Nevertheless, the payment actually made in February 1985 was \$20,000, not \$50,000, and it was accounted for as "salaries - executive."¹¹⁰

The \$30,000 payment: The next mention of a bonus for McDougal appears in the minutes dated April 17, 1985. There are several drafts of these minutes, each awarding McDougal \$30,000 but each containing a slightly different rationale.¹¹¹ In February 1986, Latham called Heritage from Colorado to instruct her to change the characterization of Jim McDougal's bonus by deleting the April 17, 1985 bonus of \$30,000 and increasing the February 1985 bonus from \$20,000 to \$50,000.¹¹² As noted above, the February 1985 minutes were changed in this fashion. Nonetheless, the \$30,000 was not deleted from the final version of the April 1985 minutes (signed only by Jim McDougal), which reads:

RESOLVED, that the Corporation pre-pay to Jim McDougal \$30,000 of his annual bonus in recognition of the profits of the prior year, and that said bonus is to be paid directly to Whitewater Development.¹¹³

108 RTCKC37420-21. This is the figure for 1984 profits, not 1985 profits, notwithstanding the provisions of the bonus program set forth in the January 21, 1985 minutes. See RTCKC37421; Young Interview, Nov. 2, 1995, at 18-19.

109 RTCKC46950-51. Young does not think McDougal was paid \$50,000 in one lump; instead, this represents the sum of the \$20,000 paid in February 1985 and the \$30,000 paid in April 1985 (discussed below). Young Interview, Nov. 2, 1995, at 20.

110 RTCKC44433 (general ledger as of Apr. 30, 1985); Young Interview, Nov. 2, 1995, at 31-32. Typically Latham, as opposed to McDougal, instructed Young on how to account for the bonuses. Young Interview, Nov. 2, 1995, at 17-18.

111 RTCKC37414 ("in recognition of the profits of the prior year and in anticipation of higher profits in 1985"); RTCKC 37419 (~~"his annual bonus of \$30,000 of his annual bonus in recognition of the profits of the prior year and in expectation of higher profits in 1986"~~) (editing in original); RTCKC37415 ("\$30,000 of his annual bonus in recognition of the profits of the prior year ~~and in expectation of higher profits in 1986~~") (editing in original). Young says the handwriting on RTCKC37414 and 374129 is Patricia Hentage's except for the words "annual meeting," which appear to have been written by Sue Strayhorn. Young Interview, Nov. 2, 1995, at 24-25.

112 *Id.* at 8. Compare IG Ex. III-152, at 2, in which Hentage confirms the change from \$20,000 to \$50,000 but claims that Latham instructed her to have the minutes show the \$30,000 bonus was paid to Whitewater. See also Preliminary Report at 101.

113 CR0686 (signed by McDougal)

The check for this bonus was cut April 30, 1985 and was made payable to Whitewater. Greg Young explained:

Q. . . . To the best of your recollection, why did you prepare this check [the \$30,000 check to Whitewater, which Young signed]? Did someone ask you to do it?

A. John Latham told me to.

Q. And how did he explain what it was for?

A. Quote, "We need to get some money in Jim's hands."

Q. That's all he said?

A. Yes.

Q. Did he give you any sort of documentation --

A. No.

Q. -- to say what it was for?

A. No.

Q. Did you ever get any anything else from Latham explaining what the -- what the money was for?

A. No.¹¹⁴

Q. Okay.

MR. WAGNER: Greg, you mentioned that John Latham mentioned that he needed to get some money in Jim McDougal's hands. Did he direct you to write it payable to Whitewater Development?

MR. YOUNG: Yes.

MR. ERICSON: Q: I take it it was not your idea to pay it to Whitewater?

114 Young Interview, Nov. 2, 1995. at 26

A. Oh, no. I really didn't know what Whitewater was.¹¹⁵

Young cannot recall any other occasion in which Latham made a request such as "we need to get some money in somebody's hands."¹¹⁶

While the minutes justified the \$30,000 payment as a bonus, it, unlike the \$20,000 payment, was never accounted for in this way. Instead, it was accounted for in two different ways: first, as a consulting fee, and second, as a capitalized expense attributed to Maple Creek.

At first, Greg Young accounted for the \$30,000 as a consulting fee; his journal voucher dated April 30, 1985 (the date the check bears) reads, "pmt to Whitewater Dev. for consulting fee."¹¹⁷ Young says he did so at Latham's direction:

Q. Now, how would you have decided how to account for -- for this?

A. Because I asked John [Latham] what it was for.

Q. . . . And what did he say, to the best of your recollection?

A. Consulting fee.

Q. Did he provide any further detail?

A. Hmm-mm, no.¹¹⁸

Six months later, Latham directed Young to change the accounting for the \$30,000. This time, Young's journal voucher backed out the consulting fees and posted it to a "Reserve for Development, Maple Creek Farms account."¹¹⁹

115 *Id.* at 27

116 *Id.*

117 RTCKC44441 (emphasis in original); the check is CR0264; the deposit slip is DKRT101144, the relevant page of the general ledger is RTCKC44437. Greg Young handled all the bonus payments in 1985 and 1986. Young Interview, Nov. 2, 1995, at 14, 25-26. Castleberry knew nothing about these documents. Castleberry Interview, Nov. 2, 1995, at 47-65.

118 Young Interview, Nov. 2, 1995, at 30.

119 RTCKC44441A; Young Interview, Nov. 2, 1995, at 34-37.

Young is unaware of any consulting or other services provided by Whitewater to any of Madison Financial's projects, including Maple Creek.¹²⁰ When asked why Latham would have sought to recharacterize this payment, Young answered:

Q. Greg, you mentioned that Mr. Latham's motivation for the entry might relate to avoiding having this hit the bottom line.

A. Yes.

Q. Why would that have been a motivation?

A. Because of bonuses. Jim's bonus was based on the profit of Madison Financial Corporation; John's bonus was based on net profit of Madison Guaranty after Madison Financial's profits were rolled into Madison Guaranty. So this meant \$3,000 for each of them, in essence.

Q. Did he express that explicitly?

A. No, no. No. But it didn't take a rocket scientist to figure that out.¹²¹

b. Transaction 8 (charts 12 and 12A), April 1985-April 1986.

As chart 12 illustrates, this transaction occurred over the space of a year. The top half of chart 12 covers 1985; the bottom half covers 1986.

In April 1985, Stephens Security Bank loaned \$135,000 to Flowerwood Farms; and Flowerwood Farms paid \$24,456 to Whitewater. As chart 7 illustrates, Whitewater used this \$24,456 to fund most of a \$25,000 payment to Chris Wade's Ozarks Realty Company.

In 1986, the loan from Stephens Security Bank was repaid in two installments, one in January 1986 and the other in April 1986.¹²² Both payments have connections to Madison Guaranty.

120 Young Interview, Nov. 2, 1995, at 35-36. Young said as much to auditors from KPMG Peat Marwick when they questioned the recharacterization during an audit conducted in 1987. PM000003121; Young Interview at 38-39.

121 Young Interview, Nov. 2, 1995, at 37. Latham and McDougal each had bonus arrangements awarding them 10 percent of net profits.

122 Because money is fungible, one cannot say which of these funded the \$24,456; either, standing alone, was sufficient to do so. See Preliminary Report at 84-86.

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In January 1986, Madison Financial paid a bonus of \$75,949 to Jim McDougal; and McDougal used \$40,000 of that money to repay a portion of Flowerwood Farms' loan from Stephens Security Bank. In April 1986, Madison Guaranty loaned \$825,000 to Dean Paul, Ltd. Of this \$825,000, \$502,000 went to David Hale's Capital Management Services, Inc., which loaned \$300,000 to Susan McDougal dba Master Marketing.¹²³ Of this \$300,000, \$111,524 went to retire the remainder of Flowerwood Farms' loan from Stephens Security Bank.

i. The \$75,949 bonus paid to Jim McDougal in January 1986.

Part of the Stephens Security Bank loan was repaid in January 1986 out of the McDougals' joint account at Madison Guaranty. The McDougals' account would not have had the funds needed to make this payment but for a payment of \$75,949 that Jim McDougal received on January 6, 1986 from Madison Financial.

The check, dated January 6, 1986, from Madison Financial to Jim McDougal does not state a purpose for the transaction.¹²⁴ The check stub, general ledger entries and Jim McDougal's 1986 W-2 wage statement all state that the payment was a bonus.¹²⁵ The check stub is dated January 7, 1986 and indicates the disbursement was "Jim's Bonus."¹²⁶ The December 31, 1985 Madison Financial general ledger (a printout run January 14, 1986) has an entry for \$78,952 posted to account 6012, "Bonus Expense," bearing the description "Dec 31 85 Jim's Bonus 10%."¹²⁷ The \$3,003 difference between the \$78,952 posted in the general ledger and the \$75,949 paid to McDougal is reconciled on McDougal's 1986 W-2 wage statement, which deems this amount "social security tax withheld."¹²⁸

As summarized above, Madison Financial purported minutes for January 1985 state that McDougal had a 10 percent bonus arrangement with Madison

123 The Preliminary Report did not lay out the connection between Madison Guaranty, Dean Paul, Ltd. and Capital Management Services, Ltd. That was the subject of another part of this investigation. See chart 12A for a depiction of the connection.

124 IC42743. This check was signed by Greg Young, who had replaced Paul Castleberry.

125 Young also confirms this. Young Interview, Nov. 2, 1995, at 39.

126 RTCKC44345

127 RTCKC44350

128 RTCKC44352. Young verified the withholding. Young Interview, Nov. 2, 1995, at 42.

Financial.¹²⁹ Even if that is assumed to be true, it is not clear that the bonus was properly calculated. Assume that the "10%" referenced in the general ledger means "10 percent of Madison Financial's net profits." If so, the operative question is whether the amount paid was 10 percent of Madison Financial's net profits.¹³⁰ The answer is "no."

No audited financial statement states that Madison Financial had a net income of \$789,520 (or anything like that) in 1985.¹³¹ For 1985, two sets of audited financial statements were prepared for Madison Financial. The first, prepared by Frost & Company and dated February 17, 1986, states that Madison Financial's net income for 1985 was \$323,960.¹³² The second, prepared by Peat Marwick in May 1987, states that Madison Financial had no net income for 1985 and instead lost \$2.1 million.¹³³ Neither set of financial statements supports the bonus, but neither was available as of January 6, 1986, the date by which the bonus was paid.¹³⁴

129 IG Ex. III-50, at 1. As described above, these minutes, like all the Madison Financial minutes dated after December 1984, are of questionable authenticity, as they were drawn up long after the fact.

130 Whether it means before taxes or after taxes is of no consequence, as Madison Financial was not accruing income taxes during this period.

131 Young confirms that the bonus was calculated using unaudited numbers. Young Interview, Nov. 2, 1995, at 39-41.

132 MG0001621; RLF1 46529. The financial statement is confusing because it mislabels as "1984" the second page of a two-page chart showing Madison Financial's net income for 1985. Nevertheless, a careful examination of the financial statements as a whole show that the chart contains 1985 numbers. The chart's numbers are taken from and can be traced back to 1985 numbers contained elsewhere in the statements; these numbers differ substantially from 1984 numbers. For example, "interest on loans" is \$6,202,526 on MG0001620; that number and the comparable number for 1984 (\$2,134,279) both appear on MG0001600.

In 1988, Madison Guaranty sued Frost & Company, alleging that its audits for 1984 and 1985 had overstated net income and disguised Madison Guaranty's insolvency. The Frost & Company action originally was styled *Madison Guaranty Savings & Loan Association, et al. v. Frost & Company*, No. 88-1193 (Pulaski Cty. Cir. Ct.). After Madison Guaranty failed, the action was removed to United States District Court, and the Federal Deposit Insurance Corporation was substituted for the plaintiffs. The action then was styled *FDIC v. Frost & Company*, No. LR-C-89-0216 (E.D. Ark.). Later still the RTC was substituted for the FDIC, and the case became *RTC v. Frost & Company*, under the same docket number. Hereinafter, the case will be referred to as "*RTC v. Frost & Co.*"

133 Consolidated Financial Statements and Consolidating Schedules for Madison Guaranty Savings and Loan Association and Subsidiary, Dec. 31, 1986, June 30, 1986 and Dec. 31, 1985, Schedule 2

134 Young paid the bonus this early, before receipt of audited financial statements, because Latham instructed him to do so. Young Interview, Nov. 2, 1995, at 39-41.

Even if Madison Financial had earned (or reasonably was believed to have earned) net income sufficient to justify a bonus of \$75,949, there would be an issue as to whether the bonus had already been paid in part. As detailed above and in the Preliminary Report, McDougal received \$20,000 in February 1985 and \$30,000 in April 1985. The putative rationale for each is ambiguous.

The February 1985 minutes tie the \$20,000 to profits "for the past two years," perhaps suggesting that it is not a prepayment of the 1985 bonus.¹³⁵ In contrast, the April 1985 minutes state that "the Corporation pre-pay to Jim McDougal \$30,000 of his annual bonus in recognition of the profits of the prior year, and that said bonus is to be paid directly to Whitewater Development."¹³⁶ It is not clear what it means to "pre-pay" a bonus "in recognition of the profits of the prior year."¹³⁷ If this was a payment on account of 1984 profits, it cannot be justified by a plan that starts with fiscal year 1985. If, instead, this is a prepayment of McDougal's 1985 bonus, then it should have been subtracted from the payment he received in January 1986. Young says he never thought of this at the time and would be reluctant to take a position on the issue today because he does not know why McDougal was paid the \$20,000 or the \$30,000.¹³⁸

Given these facts, the question becomes whether any of the following acts amounts to intentional wrongdoing:

- Paying and accepting payment of the bonus without waiting for the results of the annual audit.
- Failing to repay any unearned portion of the bonus.

Not waiting for the audit. The propriety of calculating and paying a bonus before receipt of audited numbers is largely a question of complying with the terms of the bonus arrangement and any applicable bylaw. The minutes

135 RTCKC46950-51.

136 CR0686 (signed by McDougal).

137 Madison Financial minutes dated Jan. 21, 1985, IG Ex. III-50, at 1. Young does not recall whether this amount was paid on account of 1984 profits or 1985 profits. Young Interview, Nov. 2, 1995, at 21-23. From the text of the minutes, he would draw the inference that it was meant to be a prepayment of the 1985 bonus, but he really does not know what was meant, and he cannot reconcile his inference with the fact that these payments were not deducted from the bonus for 1985 paid in January 1986. *Id.*

138 Young Interview, Nov. 2, 1995, at 43-44

that purport to establish the bonus arrangement are silent on this point.¹³⁹ Therefore, it cannot be said that paying the bonus before receipt of the audit report was wrongful. It was careless not to require an adjustment after the audit, as is customary, but at this point carelessness is not actionable.¹⁴⁰

Failing to repay any unearned portion of the bonus: There are two theories for saying that part or all of the bonus was unearned:

- o If the April 1985 payment was a prepayment of McDougal's 1985 bonus, then the payment made in January 1986 should have been reduced by \$30,000.
- o Once either of the audited financial statements was received--both showed that Madison Financial did not have adequate net income to justify the bonus--the unearned portion of the \$75,949 should have been returned.

Under either theory, taking or retaining the unearned portion of the bonus might constitute intentional wrongdoing on the part of McDougal. There is no evidence that McDougal repaid Madison Financial any part of this bonus. A review of Madison Financial's general ledger history and the McDougals' checking account for 1986 does not show any such repayment.

If Jim McDougal's 1985 bonus should have been adjusted for audited results, or if it should have been reduced by \$30,000, then McDougal should have repaid Madison Financial the difference. If, as the evidence shows, he did not, the overpayment represents a loss to Madison Financial.

If the \$30,000 payment should have been subtracted from the payment, the overpayment obviously was \$30,000. If not, but if an adjustment should have been made once the Frost & Company audit report was received, then the overpayment was \$42,324.¹⁴¹ If both are true, the overpayment was

139 In general, payment of bonuses before receipt of audited financial statements is unusual but not unheard of. For example, were tax rates about to increase, a company might arrange to pay bonuses before year-end. In such circumstances, audited financial statements would not be available. Typically, however, a company that did this would require an adjustment (either an additional payment, or a return of a portion of the payment) after the books were closed and final numbers were available.

140 See Preliminary Report at 7.

141 Based on Frost and Company's report, net income for Madison Financial was \$323,960. Adding back the McDougal bonus expense of \$78,952 results in adjusted income before bonus expense--the new starting point--of \$402,912. For the bonus to be 10 percent after profits (as is customary), some algebra is necessary. The result is a bonus of \$36,628. Deducting the \$36,628 from income before bonus of \$402,912 results in income after bonus of
(continued...)

\$69,321.¹⁴² In any event, the \$40,000 disbursement from the McDougals' checking account on January 23, 1986, which funded a payment to Stephens Security Bank, was funded by this bonus.¹⁴³

ii. The \$300,000 loan made to Susan McDougal in April 1986.

As discussed in the Preliminary Report, in April 1986, Capital Management Services loaned \$300,000 to Susan McDougal, dba Master Marketing. The proceeds were deposited into the McDougals' joint checking account at Madison Guaranty.¹⁴⁴ Of these proceeds, \$25,000 were used to fund an "earnest money" deposit on certain International Paper Company land purchased in the name of Whitewater Development Company and \$111,524 retired the remainder of Flowerwood Farms' debt to Stephens Security Bank.¹⁴⁵

The Preliminary Report did not explicitly discuss the possibility that Madison Guaranty had indirectly financed the Capital Management loan to Susan McDougal. Another report prepared in this investigation, entitled *A Report on Certain Real Estate Loans and Investments Made by Madison Guaranty Savings and Loan and Related Entities*, addresses this subject. As described at pages 23-26 of that report: Madison Guaranty made an \$825,000 loan to Dean Paul, Ltd. (which was never repaid);¹⁴⁶ Dean Paul, Ltd. used these funds to purchase property from David Hale, owner of Capital Management; after paying off debt on the property, Hale and a trustee were left with \$502,000 of the Dean Paul, Ltd. proceeds; the \$502,000 was deposited into Capital Management; and the \$502,000 enabled Capital Management to

141(...continued)

\$366,284. The bonus of \$36,628 is 10 percent of \$366,284. Thus, the difference between the amount of bonus paid (\$78,952), and the proper amount of bonus, based on Frost & Company numbers (\$36,628), is \$42,324. This would be the amount of excessive bonus if all the stated assumptions are correct.

142 The correct bonus, based on Frost's numbers, was \$36,628. Subtract from this the \$30,000 and \$6,628 is left. The bonus actually paid (\$75,949) minus \$6,628 equals \$69,321.

143 See chart 12

144 See Preliminary Report at 85-86

145 *Id.* at 85-86, 115-22

146 The RTC recovered a judgment against Dean Paul and Dean Paul, Ltd. of approximately \$600,000 (net). The judgment was sold to a joint venture in which the RTC is a venturer. If money is collected on the judgment, the RTC will stand to benefit.

fund the \$300,000 Susan McDougal loan.¹⁴⁷ The Independent Counsel's indictment dated August 17, 1995 of Jim McDougal, Susan McDougal and Jim Guy Tucker alleges essentially the same facts and deems this a conspiracy to defraud.¹⁴⁸ Chart 12A, which is new, illustrates this transaction.

The fungibility of money makes it difficult to say which transaction (the January 1986 transaction or the April 1986 transaction) funded the repayment to Stephens Security Bank of the funds that went to Whitewater. Nevertheless, both transactions may have involved intentional wrongdoing (on the part of the McDougals) and both transactions apparently caused a loss to Madison Guaranty.

Transaction 8 resulted in the payment of \$24,456 to Whitewater in 1985. The two transactions in 1986 that repaid the Stephens Security Bank loan which indirectly funded the \$24,456, however, cost Madison Guaranty much more. The McDougal bonus of January 1986 cost Madison Guaranty at least \$42,324 and perhaps as much as \$75,949. The Dean Paul, Ltd. loan of February-April 1986 may have cost Madison Guaranty as much as \$1.2 million.¹⁴⁹ The relationship of Whitewater to the McDougal bonus and the Dean Paul loan, however, would appear to be tangential at best.

5. Summary.

Traceability has not been established between Madison Guaranty and transactions 2, 4, 5 and 7. There is no reasonable basis to allege that these transactions caused any loss to Madison Guaranty.

While traceability can be established with respect to transactions 1, 3A, 3B and 9, there is no reasonable basis to allege liability or damages. Transaction 6 may raise questions, but its sole beneficiary has been released by the RTC after litigation over commissions.

This leaves only the McDougal \$30,000 bonus and transaction 8. The evidence calls into question the bona fides of the \$30,000 bonus paid in April

147 Don Denton Interview, June 1, 1994, at 11. Another \$150,000 of the \$825,000 loan from Madison Guaranty to Dean Paul, Ltd. enabled Capital Management to fund a loan to Castle Sewer & Water Company, which it used to make the down payment to Madison Financial on a purchase of the Castle Grande sewer and water facilities. *Id.*

148 McDougal Indictment ¶ 16, at 10-12. The indictment also alleges that Capital Management's receipt of the \$502,000 enabled it to seek additional capital from the Small Business Administration. *Id.* ¶ 16(l), at 12.

149 The figure of \$1.2 million is taken from damages calculations performed by RTC Investigations. The RTC has entered into an agreement with Tucker tolling all statutes of limitations.

1985. There also is some basis for believing that the RTC could prove liability and damages with respect to transaction 8. Jim McDougal's retention of the January 1986 bonus may be wrongful and the money came directly from Madison Financial. Susan McDougal's receipt of the \$300,000 loan from Capital Management may be wrongful and may be traceable back to Madison Guaranty.

D. Analysis of possible claims.

1. Common law fraud.

To state a claim for fraud, one must have evidence of material misstatements or of material omissions by one who has a duty to make a statement.¹⁵⁰ Under Arkansas law, the elements of common law fraud are:

- A false representation of a material fact;
- Knowledge or belief on the part of the person making the representation that the representation is false;
- An intent to induce reliance upon the false representation;
- Justifiable reliance; and
- Resulting damages.¹⁵¹

To evaluate a possible claim by the RTC as successor in interest to Madison Guaranty, one must focus on the means by which money left Madison Guaranty. A case for fraud against someone might be made out if, for example, that money was obtained by means of a material misstatement or omission.

a. The \$30,000 McDougal bonus.

This looks like fraud. If Greg Young's version of the facts is credited, McDougal needed some money, so he, working through Latham, took \$30,000 and rather clumsily papered the record to make the transaction look like a bonus and then a consulting fee and then a capitalized cost of developing Maple Creek. No credible evidence supports the characterization of the payment as a consulting fee or a capitalized cost of developing Maple Creek.

¹⁵⁰ The evidence also must suffice to meet the pleadings requirements of Fed. R. Civ. P. 9(b), which requires that "the circumstances constituting fraud or mistake . . . be stated with particularity."

¹⁵¹ *Morris v. Valley Forge Insurance Co.*, 305 Ark. 25, 805 S.W.2d 948, 951 (1991).

Nor does much evidence support its characterization as a bonus. As Madison Financial's "disinterested" directors, Latham and Young could have awarded McDougal a bonus, but Young did not even know he was a director, and Latham's repeated attempts to recharacterize the transaction would undermine any argument that it was bona fide.¹⁵²

b. Transaction 8.

Transaction 8 involves two quite different transfers out of Madison Guaranty. The first is the bonus payment to McDougal made in January 1986. The second is the loan to Dean Paul, Ltd. that, according to the Independent Counsel, funded Capital Management's loan to Susan McDougal; this occurred in several steps between February and April 1986.

The \$75,949 bonus: This appears to be wrongful but theories other than fraud seem more appropriate and easier to prove. The bonus was paid on the strength of unaudited financial statements. Both the Frost & Company audit and the Peat Marwick audit revealed that these unaudited financial statements were wrong. Without more, however, the fact that the auditors made corrections, even material corrections, does not prove that the unaudited statements were deliberately false. While the evidence assembled in the various parts of this investigation shows a number of accounting entries that, at the very least, were questionable, proving, one by one, that these were intentionally wrong and then cumulating them to decrease net income materially would be difficult and expensive. Proving that failures to recognize losses were deliberate also would be difficult.

The loans: The McDougal Indictment deems these loans the product of a conspiracy to defraud involving the McDougals and Tucker. The RTC has an agreement with Tucker tolling all statutes of limitation ("tolling agreement").

c. The other traceable transactions.

Transactions 1, 3A, 3B, 6 and 9: Given Castleberry's and Young's explanations of how payables were handled, one could hypothesize that somebody might have forged an invoice or lied about the purpose of a check. The evidence does not support such a hypothesis. The checks and deposit slips do not provide evidence that the transactions lacked a legitimate basis. Nor has other evidence to that effect been located. In each instance, Madison Guaranty or Madison Financial had an existing business relationship with its direct payee (Bill Henley, Madison Marketing, Madison Real Estate or West-Ark Construction). Thus, the record does not allow the RTC to state a claim for fraud with respect to these transactions.

¹⁵² Whether a claim such as this could be pursued cost-effectively is discussed in part II.E below.

2. Conversion.

Conversion is the civil-law counterpart to theft. Its essence is the intentional taking of property belonging to another in violation of the owner's rights. It is an intentional tort. Under Arkansas law, the elements of conversion are:

- o The exercise of dominion over the property of another;
- o With the intent to exercise that dominion or control that dominion;
- o In violation of the rights of the owner or person entitled to possession of the property; and
- o Resulting damage.¹⁵³

The \$30,000 bonus: Here, property (money) belonging to Madison Guaranty or Madison Financial was taken and given to Jim McDougal personally. The clumsy attempts to mischaracterize this transaction in the record permit an inference that the taking of the money was both deliberate and wrongful.

The \$75,949 bonus: Here too, money belonging to Madison Guaranty or Madison Financial was taken and given to Jim McDougal personally. What is less clear is evidence of a wrongful intent. Jim McDougal may argue that when he received this money he believed that Madison Financial's earnings supported the bonus. Whether or not he had such a belief in January 1986, however, by February 1986 the Frost & Company audit showed that Madison Financial had not earned that much money. By then, at least, McDougal must have known that he should return a portion of his bonus. He did not do so.

To be conversion, the taking of property need not be a manual taking or for the defendant's own use but only in exclusion or defiance of the plaintiff's rights.¹⁵⁴ A claim for conversion can be stated against one who came into possession lawfully and then improperly exercised dominion or control over the

¹⁵³ *City National Bank of Fort Smith v. Goodwin*, 301 Ark. 182, 783 S.W. 2d 335, 337 (1990).

¹⁵⁴ *McKenzie v. Tom Gibson Ford, Inc.*, 295 Ark. 326, 749 S.W. 2d 653, 655 (1988).

property.¹⁵⁵ The law does not require a demand for return of the property and a refusal.¹⁵⁶

If, however, the bonus was paid as the result of a mutual mistake or as the result of a unilateral mistake made by Madison Financial, no claim for conversion can be stated:

The general rule is well settled that one who takes and disposes of the goods of another is guilty of a conversion thereof, although he did so under an honest but mistaken belief that the goods were his own. However, the rule does not apply where the mistake is mutual and where the owner's error is solely responsible for the taking and use of the property by defendant.¹⁵⁷

Nevertheless, it might be possible to state a claim against McDougal for money had and received. Such a claim can be based on mistake.¹⁵⁸ It is more in the nature of assumpsit and thus ex contractu.¹⁵⁹ Thus, intentional conduct is not an element of this claim. Even so, proof of intentional misconduct, coupled with proof of the elements of this claim, might satisfy the extender statute. In the absence of any case law it is impossible to say for sure.

155 In *McKenzie*, for example, a car dealership that accepted "earnest money" from plaintiff could be liable for conversion when it used that money to pay down a loan plaintiff had co-signed at some earlier time for her son.

156 *City Nat. Bank of Fort Smith v. Goodwin*, 783 S.W.2d at 340.

157 89 C.J.S., *Trover and Conversion*, §10. See also *Restatement 2d, Torts*, § 244. Compare *Newhart v. Pierce*, 254 Cal. App. 2d 783, 792-93, 62 Cal. Rptr. 553 (1967) (defendants' mistaken belief that they could remove cattle under options to purchase was not a defense to an action for conversion of the cattle).

158 See e.g., *General Contract Purchase Corp. v. Clem*, 220 Ark. 863, 251 S.W. 2d 112, 113 (1952) ("Restitution does not presuppose a wrong by the person who received the money, and the presence of actual fraud is not essential to the invocation of [a cause of action for money had and received]"). It is an action greatly favored by the courts, less restricted and fettered by technical rules and formalities than any other form of action. *Import Motors, Inc. v. Luker*, 268 Ark. 1045, 599 S.W. 2d 398, 401 (Ark. App. 1980). A cause of action for unjust enrichment is the equitable counterpart of an action for money had and received but is maintainable only under such circumstances that in equity and good conscience prevent the wrongdoer from keeping the property. *Fite v. Fite*, 233 Ark. 469, 345 S.W. 2d 362, 363 (1961).

159 *St. Paul-Mercury Indemnity Co. v. City of Hughes*, 231 Ark. 530, 331 S.W. 2d 106, 109 (1960).

The loans: Here, fraud seems the more apposite theory, but some cases suggest that obtaining a loan under false pretenses amounts to conversion.¹⁶⁰

Transactions 1, 3A, 3B, 6 and 9: So far as can be determined, services were rendered by the vendors paid through these transactions. There is no evidence of conversion.

3. Breach of fiduciary duty.

As noted in the Preliminary Report, this could be an intentional tort, but only if one can prove a wrongful intent.

The \$30,000 bonus: As noted above, one can infer a wrongful intent from the efforts to mischaracterize this transaction.

The \$75,949 bonus: Proof of failure to repay this bonus after receipt of financial statements showing it to be excessive might support such a claim.

The loans: If the Independent Counsel proves his allegations of a criminal conspiracy, the requisite intent probably would be established.

Transactions 1, 3A, 3B, 6 and 9: So far as can be determined, services were rendered by the vendors paid through these transactions. The only fiduciary duty issues are the issues raised by transactions 3B and 9. As noted above, those theories are weak.

4. Check kiting.

Check kiting is really a special case of fraud or conversion, or both. As noted in the Preliminary Report, check kiting involves a scheme to create the illusion that one has sufficient money in the bank to cover the requested draws when, in fact, one does not have sufficient money. Two conditions must exist for a successful check-kiting scheme. First, there must be a period of several days in the collection process before the depository bank presents the check to the drawee bank. Second, the banks must be willing to pay checks drawn against uncollected funds.¹⁶¹ If these conditions are met, one can, at least for a time, pay out money that one does not have and yet not create an overdraft. Put another way, the successful check kite requires the use of two or more banks, between or among which money must be shuttled so as to fool one or

160 *In re Strapko*, 5 Bankr. Rptr. 443, 445 (Bankr. D. Minn. 1980); *In re Blagaich*, 57 Bankr. Rptr. 375, 377 (Bankr. S.D. Fla. 1986).

161 See Benton E. Gup, *Bank Fraud: Exposing the Hidden Threat to Financial Institutions* 25 (Bankers Publishing Co. 1990).

more of the banks into thinking that the person who writes the checks has money when, in fact, that person does not have money.

The situation described here does not fit this pattern. Money was not shuttled between two banks; all the money at issue came out of Madison Guaranty and, for the most part, all the money stayed at Madison Guaranty at least until it reached Whitewater and was put to use paying creditors.¹⁶² In addition, nobody seems to have been "fooled" in the sense that one normally is fooled by a kite. As detailed in the Preliminary Report, overdrafts were created or exacerbated all the time; indeed, Madison Financial was chronically in a state of being overdrawn. If this were a kite, it was singularly unsuccessful at forestalling overdrafts.

5. Conspiracy.

In Arkansas, the elements of civil conspiracy are:

- o A combination of two or more persons;
- o To accomplish an unlawful or oppressive purpose or a lawful purpose by unlawful, oppressive or amoral means;
- o One or more overt acts committed pursuant to the conspiracy;
- o Damages caused by these acts.¹⁶³

To state a claim for civil conspiracy, one must be able to identify the underlying unlawful act that the conspirators were aiming to commit. The conspiracy (or agreement) by itself is not actionable unless one can show that it was aimed at the commission of a wrong (here, "fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the institution"¹⁶⁴). Thus, while conspiracy is sometimes referred to as a claim or cause of action all by itself, it is better conceived of as an alternate way of pleading the underlying tort against a group of people, some of whom did not commit all the elements of the tort themselves and thus would not be directly liable individually absent the allegation of conspiracy.¹⁶⁵

162 Of the entities mentioned above, only West-Ark Construction seems to have banked elsewhere.

163 *Mason v. Funderburk*, 247 Ark. 521, 446 S.W. 2d 543, 548 (1969).

164 12 U.S.C. § 1441a(b)(14)(A)(ii)

165 See *Southwestern Pub. Co. v. Ney*, 227 Ark. 852, 302 S.W.2d 538, 542-43 (1957); *Ragsdale v. Watson*, 201 F. Supp. 495, 501-02 (W.D. Ark. 1962).

To state the claim of conspiracy, say, conspiracy to commit fraud or to convert someone's property, one must first be able to state a claim for the underlying offense. As noted above, the RTC might be able to state claims for fraud, conversion and breach of fiduciary duty relating to McDougal's \$30,000 bonus paid in April 1985 and to transaction 8.

The \$30,000 bonus: The evidence suggests that this may have been a conspiracy on the part of McDougal and Latham. Whether others joined such a conspiracy is difficult to say. It seems unlikely that Heritage or Strayhorn had the requisite knowledge or intent. With regard to Young, the question is much closer as to whether he made the requisite agreement to participate in the conspiracy. This question turns on the factual question of how much knowledge he had of the conduct of McDougal and Latham (which, for purposes of this discussion, is assumed to be deliberate and unlawful). If the finder of fact concludes that Young had knowledge that McDougal and Latham were engaging in unlawful and tortious activity, his participation could lead to the inference of his agreement and could render him liable for conspiracy.¹⁶⁶ There is a significant possibility, however, that he could be viewed as someone who simply did what his boss told him to do without intending to join in a conspiracy.

The \$75,949 bonus: The evidence suggests that the bonus was believed to be bona fide when paid. The failure to repay the bonus may be wrongful, but that appears to be the unilateral wrongful act of McDougal. Thus, a conspiracy theory appears inappropriate here.

The loans: The Independent Counsel has alleged that these transactions were undertaken pursuant to a conspiracy involving the McDougals and Jim Guy Tucker. As noted, the RTC has a tolling agreement with Tucker.

6. Aiding and abetting.

Arkansas has expressly adopted the principle of aiding and abetting:

166 See *United States v. Cohen*, 1990 U.S. Dist. LEXIS 17675, *11-*12 (E.D. Pa. 1990) (denying an accountant's motion for acquittal following his conviction for conspiracy to obstruct the functions of the IRS and aiding and abetting the filing of false tax returns). See also *United States v. French*, 974 F.2d 687, 696 (6th Cir. 1992) ("[p]roof of a formal agreement is not required; it must only be proven that members of the conspiracy had at least a tacit or mutual understanding to try and accomplish an unlawful goal), *cert. denied*, 122 L. Ed. 2d 160 (1993). But cf. *Resolution Trust Corp. v. Rowe*, 1993 U.S. Dist. LEXIS 1497, at *29-*33 (N.D. Cal., Feb. 5, 1993) (holding that a title company's participation in a phony loans conspiracy could not be inferred from the title company's recklessness in allowing documents to be removed from the title company's offices and notarized elsewhere).

All who actively participate in any manner in the commission of a tort, or who command, direct, advise, encourage, aid or abet its commission, are jointly and severally liable therefor.¹⁶⁷

The Arkansas courts have not, however, delineated the elements for establishing aiding and abetting liability in a civil context.

Other courts, in slightly different contexts, have elaborated at length on the elements of aiding and abetting and on the standard to be applied in determining whether the elements have been satisfied. In a leading case, one federal court, relying in part on *Restatement (Second) of Torts* § 876 (1979), set forth the following elements for aiding and abetting:

- the party whom the defendant aids must perform a wrongful act that causes injury;
- the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance; and
- the defendant must knowingly and substantially assist the principal violation.¹⁶⁸

Like conspiracy, aiding and abetting is a legal theory used to impose liability on someone who knowingly assists in the commission of a tort but does not perform all the elements of that tort himself. Without the underlying tort, there is no claim for aiding or abetting. As noted above, the RTC might be able to state claims for fraud, conversion and breach of fiduciary duty.

The \$30,000 bonus. As noted, the evidence suggests that this may have been a conspiracy on the part of McDougal and Latham. Heritage and Strayhorn may have assisted in the commission of the act, but it is unclear that they did so knowing that they were participating in an unlawful scheme.

Young, however, may be liable for aiding and abetting. The pivotal question as to Young is whether he had the requisite knowledge that he was assisting an illegal or tortious activity. Given that Latham told Young that "We need to get some money in Jim's hands"¹⁶⁹ as the reason for writing the

¹⁶⁷ *Hinton v. Bryant*, 236 Ark. 577, 367 S.W.2d 442 (1963). See also *Cobb v. Indian Springs, Inc.*, 258 Ark. 9, 522 S.W.2d 383 (1975) (applying certain principles of aiding and abetting, i.e., advice or encouragement as substantial factor in causing tort, though not labeling them as such).

¹⁶⁸ *Haberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983).

¹⁶⁹ Young Interview, Nov. 2, 1995, at 26.

check, Young may have sufficient knowledge.¹⁷⁰ Additionally, the RTC might not have to show that Young had actual knowledge of wrongdoing, but only that he should have known or was reckless in not knowing.¹⁷¹ Even if recklessness will suffice to establish aiding-and-abetting liability, however, it is an open question whether reckless participation in the intentional misconduct of others will satisfy the statute-of limitations extender statute's requirement of "fraud" or "intentional misconduct."¹⁷²

The \$75,949 bonus: The evidence suggests that the failure to repay the bonus was the unilateral act of McDougal.

The loans: The Independent Counsel has alleged that these transactions were undertaken pursuant to a conspiracy involving the McDougals and Jim Guy Tucker. The theory, if proved, also might support an aiding and abetting claim against Tucker.

E. Cost-effectiveness.

As noted above, the RTC brings litigation only if the litigation appears to be cost-effective. Thus, even if a cause of action could be alleged, a case is not worth bringing if the would-be defendants have no money or the expected recovery exceeds the expected cost of obtaining that recovery.

170 See *United States v. Cohen*, 1990 U.S. Dist. LEXIS 17675, *2-*8 (E.D. Pa. 1990)

171 Under Arkansas law a court might apply a "knew or should have known," standard to determine whether Young is liable for aiding a fiduciary in breaching that fiduciary's duty to Madison Guaranty. See *Robertson v. White*, 633 F. Supp. 954, 967 (W.D. Ark. 1986). In the securities context, before *Central Bank of Denver v. First Interstate Bank of Denver*, 114 S. Ct. 1439 (1994) eliminated the private right of action for aiding and abetting a violation of section 10(b) of the Securities Act of 1934, some courts held that recklessness could suffice to establish scienter when a fiduciary is alleged to have aided and abetted a violation of the securities law. E.g., *Rolf v. Blyth Eastman Dillon & Co.*, 570 F.2d 38, 44 (2d Cir.) ("where, as here, the alleged aider and abettor owes a fiduciary duty to the defrauded party, recklessness satisfies the scienter requirement"), cert. denied, 439 U.S. 1039 (1978); *IIT, an Intern. Inv. Trust v. Cornfeld*, 619 F.2d 909, 923 (2d Cir. 1980). It may be difficult, however, to persuade a court to apply the rationale of those cases in other contexts. See *Resolution Trust Corp. v. Rowe*, 1993 U.S. Dist. LEXIS 1497, at *29-*33 (N.D. Cal. 1993) (rejecting RTC's argument that knowledge could be established from recklessness where fiduciary alleged to have aided and abetted fraudulent scheme was an title company with narrower duties than those imposed by the securities laws).

172 12 U.S.C. § 1441a(b)(14)(A)(ii).

The \$30,000 bonus: The only beneficiary, Jim McDougal, filed for bankruptcy and obtained an order of discharge from the bankruptcy court.¹⁷³ John Latham was involved in this transaction, but he too filed for bankruptcy.¹⁷⁴ Proving this claim would require discovery from at least five witnesses (McDougal, Latham, Young, Heritage and Strayhorn). Preparing and prosecuting this claim would cost considerably more than \$30,000. Thus, this claim is not cost-effective.

The \$75,949 bonus: The only beneficiary, Jim McDougal, filed for bankruptcy and obtained an order of discharge from the bankruptcy court. The available evidence does not suggest that anyone else engaged in intentional wrongdoing with respect to this transaction. Proving this claim would require discovery from at least five witnesses (McDougal, Latham, Young, somebody from Frost & Company and somebody from Peat Marwick). Preparing and prosecuting this claim would cost considerably more than \$75,949. Thus, this claim is not cost-effective.

The loans: The potential damages here are much larger: approximately \$1.2 million. If the Independent Counsel obtains convictions with respect to these matters, a claim based on these loans might be pursued in a cost-effective manner. Alternatively, the RTC could request that the Independent Counsel seek restitution on behalf of the RTC from any parties convicted of a crime; this might avoid the cost and delay inherent in commencing a separate civil action after the resolution of the criminal proceedings. Whether anyone could pay a judgment of this magnitude is unclear. The McDougals and Latham have no money. Who else might be involved, and whether they have money, remains to be determined.¹⁷⁵ From what is known, only Jim Guy Tucker might have the ability to satisfy a judgment of this magnitude.¹⁷⁶

173 Jim McDougal filed for bankruptcy in September 1991 and obtained an order of discharge on January 17, 1992 (PMS0532, PMS0552), well before the enactment of the RTC Completion Act of 1993. The order of discharge could be set aside only if the RTC could prove a fraud on the bankruptcy court; proof that McDougal defrauded someone other than the bankruptcy court would be of no avail. Susan McDougal has not filed for bankruptcy, but the RTC already has a judgment of almost \$400,000 against her (as well as Jim McDougal, although the claim against him would be discharged). There is no evidence that either McDougal could satisfy this outstanding judgment, let alone pay something in addition should another judgment be sought and recovered against them.

174 Latham and his wife filed a bankruptcy petition on March 13, 1992. *In re Latham*, Case No. 92-40703 MDS (Bankr. E.D. Ark.). A "no asset report" was filed by the bankruptcy trustee on May 21, 1992. The debtors were discharged on June 23, 1992. The case was closed on September 17, 1992. The statute of limitations has run. It is now too late to commence proceedings to revoke the discharge.

175 The RTC has a judgment of approximately \$600,000 (net) against Dean Paul and Dean Paul, Ltd.

176 As noted above, the RTC has a toiling agreement with respect to Tucker.

III. SUMMARY AND ANALYSIS OF NEWLY RECEIVED INFORMATION PERTAINING TO THE CLINTONS.

The evidence does not suggest that the Clintons played any role with respect to the transactions discussed above. Nevertheless, because these transactions may indirectly have benefitted Whitewater (in the flow-of-funds sense discussed in the Preliminary Report), this part of the investigation has included an examination of what, if anything, the Clintons knew about these transactions when they occurred.

The Preliminary Report said little about the Clintons' knowledge of these matters because at the time little was known. Since then, however, additional information has been obtained: the Clintons' interrogatory responses; additional documents received from the Clintons' counsel, David E. Kendall, in late May 1995; and documents mentioning Whitewater that Kendall received from the White House on July 27, 1993 (the documents from the office of the late Vincent W. Foster, Jr.). This evidence has been examined against the previously available evidence both for points of consistency and for points of inconsistency.

The Clintons' interrogatory responses provide considerable new information about their expectations and approach to their investment in Whitewater. According to the Clintons, they were "passive" investors who left matters to Jim McDougal and who received relatively little information about the project. The May 1995 document production contains little that is not cumulative of documents already received. Only a few of these documents merit mention below. Similarly, the July 1995 production of the Foster documents contains little relevant to this phase of the investigation. Again, only a few documents merit mention below. Most of the Foster documents concern tax issues, mainly with respect to the Clintons' 1992 income tax return. As stated in the Preliminary Report, personal tax issues are not within the scope of the RTC's inquiry.

In the sections that follow, these three sources of information are discussed in the order that topics appear in the Preliminary Report. Wherever possible, the discussion here cross-references the appropriate section of the Preliminary Report.

A. Background to Whitewater.

The Preliminary Report discussed the McDougals' background in real estate activities in the years before the Whitewater project began.¹⁷⁷ The new information supplements this discussion with information about the Clintons' background in real estate activities.

¹⁷⁷ See Preliminary Report at 11-15.

Compared to the McDougals' experience with real estate investments, the Clintons' experience was relatively modest. Before August 1978 (when the Clintons and the McDougals purchased Whitewater), President Clinton had purchased real estate only when he had purchased two personal residences.¹⁷⁸ Mrs. Clinton had never purchased real estate except to purchase one personal residence and had never sold real estate.¹⁷⁹

Before August 1978, the Clintons made only one real estate investment. In 1977, President Clinton invested in a five-acre parcel of land together with Jim McDougal. The investment may have been made through Rolling Manor, but the Clintons are not sure. As reported on the Clintons' 1978 tax return, the parcel was sold on May 17, 1978 for \$5,000, resulting in a capital gain of \$2 150. According to President Clinton: "To the best of my recollection, this was a small real estate investment I had had with Jim McDougal, and, while small, it was a profitable one. This experience confirmed my impression that he was capable of putting together successful real estate ventures."¹⁸⁰

B. 1978-1982: The initial phase of the project.

1. 1978-1979: The original purchase of the land and the creation of the company.

Pages 16 through 19 of the Preliminary Report discussed the Clintons' and the McDougals' purchase of Whitewater and their later creation of Whitewater Development Company, Inc. (referred to here, as in the Preliminary Report, as "the Company"). The Preliminary Report said relatively little about the process by which the investors decided to purchase Whitewater. The new information helps complete that discussion.¹⁸¹

President Clinton cannot now remember specifically what he and his wife did before deciding to purchase the Whitewater real estate. As a native Arkansan, he had a general knowledge that there were many profitable land investments in the northern part of the state and that there appeared to be a market for vacation retirement real estate in northern Arkansas. He also had

178 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answers to Interrogatories Nos. 1(a)-1(c), at 1.

179 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answers to Interrogatories Nos. 1(a)-1(c), at 1-2.

180 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answers to Interrogatories Nos. 1-2, at 1-3. See also Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answers to Interrogatories Nos. 1-2, at 1-3.

181 The next two paragraphs supplement the Preliminary Report at 16, following n.50.

made a small but profitable real estate investment with Jim McDougal that apparently was closed out on May 17, 1978. He states:

The Whitewater property came to my attention through Jim McDougal, but I can't remember what he said, and I certainly can't recall "each and every conversation" I had with anyone about it or every document I reviewed. My wife and I did not visit the property before buying it with the McDougals.¹⁸²

Neither of the Clintons can recall meeting or talking to representatives of Union National Bank or of Citizens Bank of Flippin about either of the loans used to purchase the Whitewater real estate.¹⁸³ Nor can they recall what information (if any) they provided to the banks, but they believe they would have provided whatever the banks deemed necessary to process the loan application.¹⁸⁴

For the Clintons in 1978, the purchase of Whitewater represented a relatively large investment: they had placed approximately \$200,000 at risk, although they had a relatively stable asset (land) to secure their debt.¹⁸⁵ By way of comparison, approximately two months later Mrs. Clinton decided to limit her investment in commodities trading to the much smaller sum of \$1,000. In response to a question by the press about her commodities trading, Mrs. Clinton stated that her long-time friend Jim Blair told her about opportunities in the cattle market:

And when Jim said, "I think there's going to be a great opportunity to make money," and explained why and asked me what I thought we could afford to invest, I told him \$1,000. So I opened an account at his very strong recommendation and proceeded to trade over the next months until July.¹⁸⁶

182 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 3, at 4-5. Mrs. Clinton incorporated by reference President Clinton's answer to this interrogatory. Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 3, at 4.

183 This paragraph supplements the Preliminary Report at 17 n.59.

184 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 5, at 11-12; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 5, at 7.

185 This and the next paragraph supplement the Preliminary Report at 17 n.62.

186 Transcript of Mrs. Clinton's press conference of April 22, 1994, as transcribed by Federal News Service, at 2.

Later in the same press conference, Mrs. Clinton reiterated the point. Mrs. Clinton was asked a question that started "You said that--just now--that you decided that \$1,000 was as much as you could risk" In her answer, Mrs. Clinton neither confirmed nor denied this statement. She simply said that "The \$1,000 was what I wanted to start with, and it was what I thought was a good beginning, a good investment for me."¹⁸⁷

Investing in land is a very different business than speculating on commodities. Nevertheless, Mrs. Clintons' statement about the amount she was willing to place at risk in commodities trading suggests that the Clintons, in 1978, were not of a mind to place large amounts of money into investments that they believed to be highly risky.

Taken together, the new evidence shows that the Clintons placed a fair amount of trust in McDougal and did fairly little themselves to investigate the investment. They had made money with McDougal on an earlier (albeit smaller) investment, and they believed that real estate prices in northern Arkansas were going to rise.

2. Whitewater, the corporation.

The Preliminary Report noted the formation of the Company but shed little light on why it was formed.¹⁸⁸ The Clintons say it was Jim McDougal's idea to form the Company. Mrs. Clinton says that she does not "recall why he proposed this, but we relied upon his real estate experience and agreed."¹⁸⁹

The Preliminary Report noted conflicting evidence as to the identities and equity percentages of the Company's shareholders.¹⁹⁰ In her press conference of April 22, 1994, Mrs. Clinton confirmed her belief that the Clintons jointly owned half of the Company:

Q. The Whitewater development was set up, as you say, as a 50-50 partnership between the Clintons and the McDougals, meaning that you were liable for 50 percent of the losses or 50 percent of the gains; and yet, by your own accounting, you lost half or even maybe a third of what the

187 *Id.* at 11.

188 This paragraph supplements the Preliminary Report at 19-20, following n.75.

189 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 9(a), at 11.

190 This paragraph and the next two supplement the Preliminary Report at pages 20-21, following n.86.

McDougals lost. This is according to the Lyons report. Doesn't that discrepancy represent some sort of gift or gratuity?

MRS. CLINTON: No. And let me say that, yes, the ownership of the corporation was 50-50. . . .¹⁹¹

In her interrogatory answers, Mrs. Clinton explained that the Clintons did not receive stock certificates but nevertheless understood that they owned half the equity in the Company.¹⁹²

The Preliminary Report also noted conflicting evidence with regard to who served as officers of the Company. It mentioned two tax reports apparently signed by Mrs. Clinton in June 1990, both of which listed her as president. Mrs. Clinton addresses this in her interrogatory answers:

In 1990, I learned from our personal accountant, Ms. Yoly Redden, that WDC's corporate charter had been revoked for nonpayment of franchise taxes and that state franchise tax reports had not been filed. The identification of me as "President" of WDC on the franchise tax reports which were subsequently filed appears to be simply an informal designation due to my actions on behalf of WDC in 1988-1990, as described above. The forms required the signature of an "officer," and the McDougals were both unavailable. I did not sign these two documents, but I wanted all the appropriate action taken so that WDC would no longer be delinquent. In preparing responses to these interrogatories, I have learned from my counsel that Ms. Carolyn Huber completed these two documents in accordance with instructions she received from personnel in Secretary of State's office when Ms. Huber went there to file the appropriate text paperwork and pay the \$345.15 in franchise taxes that were due so that WDC would no longer be delinquent. Ms. Huber was authorized to sign my name.¹⁹³

The question of who signed these June 1990 reports has little significance for this investigation. Madison Guaranty failed in 1989. Mrs. Clinton's work between 1988 and 1990 occurred several years after the McDougal bonuses, transaction 8 and McDougal's removal at the behest of the FHLBB.

191 Federal News Service Transcript at 13.

192 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 9(a), at 11.

193 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 9(e), at 14 (citations omitted).

3. Project marketing and management.

The Preliminary Report noted that an attempt was being made to interview Chris Wade, who had primary responsibility for marketing Whitewater to potential lot buyers.¹⁹⁴ As of this writing, Wade still declines to be interviewed and has stated through counsel that he will invoke the Fifth Amendment if subpoenaed.

The Preliminary Report expressed no view as to how long the investors thought it would take to sell all the lots.¹⁹⁵ The Clintons themselves had no definite idea as to how the project would be sold. President Clinton says: "When my wife and I invested in this venture, we relied upon the McDougals to conduct or supervise sales and marketing." "My wife and I did not have a definite idea of the 'probable sell-off period of the project', and we had no expectation as to the length of time we would be holding the investment."¹⁹⁶

The Preliminary Report mentioned the preparation of a marketing brochure for Whitewater. The brochure is among the recently produced documents.¹⁹⁷

4. The investors' expectations.

The Preliminary Report attempts to reconstruct the investors' expectations from the documentary evidence.¹⁹⁸ The new evidence addresses this issue more directly. In particular, the new evidence suggests that the investors' expectations as to project expenses may have been less definite than the Preliminary Report suggested. In his interrogatory answers, for example, President Clinton states:

We had no agreements, expectations or understandings with the McDougals as to what particular improvements would be made to the property, the cost of such improvements, or how long it would take to complete them.¹⁹⁹

194 See Preliminary Report at 22-23 n.96.

195 This paragraph supplements the Preliminary Report at 22.

196 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 4 (b), at 9-10.

197 DKRT11000404-11

198 See Preliminary Report at 24-27.

199 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 4(c), at 11.

Similarly, President Clinton states that the Clintons "had no written agreement with the McDougals as to how the mortgage loan would be repaid" ²⁰⁰ The same is true with respect to the project financial and profit-sharing. The Clintons state that their agreement with the McDougals about the financing of the Whitewater project was oral and not formalized by a writing:

There was no particular definition of, nor limitation on, or financial commitment to the project, except that we anticipated that we would share equally with the McDougals in expenses and profits. Jim McDougal explained to us that he believed he could sell enough lots in a short period so that revenues from the escrow contract payments would make the project self financing, and based upon what we knew at the time about trends in Arkansas real estate and Jim's apparent success, we believed he was right. ²⁰¹

Similarly, there was no target date for a positive cash flow. The Clintons understood that, in the early period of the project before any lots were sold, before the project generated income, the four investors would have to contribute at least enough money to service the acquisition debt. The Clintons

anticipated that we and [the McDougals] would make equal contributions and that any inequalities ultimately would be evened out from revenues of the project or when the venture was sold. The books and records of the project were kept by the McDougals, and I believe that we made contributions whenever they requested us to do so. We relied upon the McDougals to tell us when we needed to make a financial contribution to the venture. ²⁰²

These statements are consistent with the other evidence.

200 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 7, at 14.

201 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to interrogatory No. 4(a), at 5-6.

202 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to interrogatory No. 4(a), at 7.

C. 1979-81: The years of land sales.

1. Operations and cash flow in fiscal year 1980.

The Preliminary Report mentioned that the Clintons contributed money toward Whitewater debt service in December 1978 by writing a check for \$10,130.58 to the Great Southern Land Company.²⁰³ Regarding this check, Mrs. Clinton says:

I believe I made the check out to Great Southern Land Company because Jim McDougal asked me to do so. Whitewater Development Company, Inc. (hereinafter, "WDC") had not been incorporated yet. I was not familiar with the Great Southern Land Company's activities, but I assumed it was a McDougal entity. I also assumed that in the early years of the project the McDougals would contribute their share toward the payment of interest and principal on the acquisition loans, but I had no knowledge of the source or amount of any such payments.²⁰⁴

The Preliminary Report noted that Whitewater sometimes lacked the money to pay debt service until just before, or just after, a payment was due.²⁰⁵ In this regard, both of the Clintons indicate that they knew little before 1992 about Whitewater's lot sales between 1980 and 1985, Whitewater's cash flow between 1980 and 1986, the McDougals' expenditures on the project between 1980 and 1986, or the source of the McDougals' money.²⁰⁶

2. The bank debt as of August 1980.

The Preliminary Report stated that McDougal replaced the \$20,000 Union Bank earnest money loan that he and Attorney General Clinton had taken out in 1978 with a \$20,000 loan from the Bank of Cherry Valley. It also stated that the Bank of Cherry Valley loan, unlike the Union Bank loan, was recourse only to McDougal and not to the Clintons. The Clintons disagree, taking the position that the Bank of Cherry Valley loan was recourse to them. Thus, President Clinton's answer to Interrogatory No. 6 states:

203 See Preliminary Report at 28

204 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 8 at 9-10

205 See Preliminary Report at 30.

206 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 15 at 27-29; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 15 at 27-32

I knew at some point that this loan had been shifted to the Bank of Cherry Valley. In my view, any shift of this \$20,000 loan from Union Bank to the Bank of Cherry Valley did not affect its character as an acquisition loan, for which my wife and I considered ourselves equally responsible with the McDougals for repayment. Indeed, my name and Jim McDougal's both appear on at least one of the Bank of Cherry Valley extension notes (DKRT100500, dated April 13, 1982, attached hereto at Tab 6A).²⁰⁷

President Clinton has no recollection of discussing the shifting of this loan from Union Bank to Bank of Cherry Valley with Jim McDougal or with anyone else.²⁰⁸

The Union Bank loan, on which both McDougal and President Clinton were liable, was paid off using funds obtained by Jim McDougal from Bank of Cherry Valley loan no. 25997. The original loan documents mention only McDougal.²⁰⁹ Thereafter, the Bank of Cherry Valley loan was extended six times.²¹⁰ The first such extension is evidenced by a promissory note. The note mentions, and is signed by, McDougal only.²¹¹ The second such extension, loan no. 27572, dated April 13, 1982 and paid off December 9, 1982 by the third extension, also is evidenced by a promissory note. This note bears McDougal's name and address but is signed both by "James B. McDougal" and by "Bill Clinton."²¹² So far as can be told from the documents (several of the promissory notes are close to illegible), the third, fourth, fifth and sixth extensions do not refer to, nor were they signed by, President Clinton.

To summarize: The \$20,000 Bank of Cherry Valley loan was taken out in June 1980 and finally retired in January 1985. For most of this period, the documentary evidence suggests that only McDougal had any liability on this loan. For the period between April 13, 1982 and December 9, 1982, however, President Clinton may also have been liable, by virtue of having signed the second loan extension.

207 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 6(a), at 12-13.

208 *Id.* answer to Interrogatory No. 6(d), at 13-14.

209 See BCV0003-04; DKRT800313-14, 800316, 801223-24.

210 BCV0022, 32-34; DKRT100500, 400945-47, 801332.

211 DKRT801332

212 DKRT100500, 101127, 400947

3. Developments in the fall of 1980.

The Preliminary Report discussed financing and construction of a prefab house on Whitewater lot 13.²¹³ According to the Clintons, it was Jim McDougal's idea and not the Clintons' to purchase and install the prefab house on lot 13.²¹⁴

Initially the house was financed by money from Pembroke Manor, a McDougal-controlled entity. Mrs. Clinton says she does not recall the mechanics of the transaction and does not recall knowing anything about the involvement of Pembroke Manor in the financing of the house.²¹⁵ Later Mrs. Clinton refinanced the house by taking out a personal loan from McDougal's Madison Bank & Trust Company. Regarding this loan, Mrs. Clinton states that she had no agreement with Madison Bank except as set forth in the promissory note. She explains:

However, as previously stated, my husband's and my understanding with Jim McDougal was that the loan was essentially a corporate one: WDC [Whitewater Development Company, Inc.] would receive the loan proceeds (which I understood were to be used somehow to pay for the prefab house), WDC would receive the down payment whenever the lot and house were sold and the escrow payments thereafter, and WDC would repay the loan at the Bank of Kingston from its operating revenues, including the proceeds and escrow payments derived from the sale of the house and lot.²¹⁶

This explanation is consistent with the Company's later payment of principal and interest on the loan but does not clarify why the loan was taken out in Mrs. Clinton's name in the first place.

The Preliminary Report discussed the sale of Whitewater lot 7 and noted press speculation that the Clintons had expressed an interest in owning the lot, or had purchased it.²¹⁷ On this subject, President Clinton's interrogatory

213 See Preliminary Report at 31-34

214 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 10(a), at 14-15

215 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 10(c), at 15-16.

216 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 11(d), at 17-18

217 See Preliminary Report at 35 n. 163

answers state: "We did not plan to keep or to buy any part of the project, although there was some discussion with the McDougals, very early on, about the possibility that, if sales went very well, we and they would each retain one lot."²¹⁸

4. Whitewater after three years.

The Preliminary Report discussed the project's situation after the first three years of operations and noted in particular what the pace of lot sales meant for debt service. As noted above, both of the Clintons indicate that they knew very little before 1992 about Whitewater's lot sales between 1980 and 1985. All they recall hearing is that, as of October 1981, "[t]hings are looking pretty good at Whitewater as our receivables run about equal to what we owe" and that, as of 1986, "the previous summer [1985], he [McDougal] had sold all the WDC property."²¹⁹

D. 1982-1985: The years of minimal sales and negative cash flows.

1. The sale of lot 13 to Hilman Logan and the repayment of Mrs. Clinton's Madison Bank loan.

The Preliminary Report described correspondence between Mrs. Clinton and Madison Bank in the summer of 1982 regarding the past due status of Mrs. Clinton's loan.²²⁰ Mrs. Clinton confirms that she

received DKRT700318, a letter dated August 5, 1982, from Ms. Theresa Pockrus at the Madison Bank & Trust . . . [Mrs. Clinton] responded to her letter with [Mrs. Clinton's] own letter dated August 11, 1982 (DKRT400134). . . This letter reflects [Mrs. Clinton's] understanding, as stated in these interrogatory responses, that the repayment of this loan was a corporate responsibility.²²¹

218 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 4(b), at 9-10.

219 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-29; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-32, referring to DKRT900101 (1981) and DKRT200475 (1986).

220 See Preliminary Report at 42.

221 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 11(e), at 18.

2. The Clintons' loan from Citizens Bank of Jonesboro.

The Preliminary Report noted that the Clintons borrowed money from Citizens Bank of Jonesboro and quoted a letter from McDougal stating that the Company had paid off this debt.²²² President Clinton states:

I recall very little about this 1979 loan for \$5000, which was repaid in 1982. When my counsel wrote to the bank, the bank responded that "[t]he underlying documents for this loan are no longer in existence due to our record retention policy. I attach at Tab 13A a copy of this letter (DKRT11000800-1000803), which has appended to it the available information about the loan provided to my counsel by the bank. I do not recall what I did with any loan proceeds I may have received, and I do not recall how the loan was repaid. My counsel have located one interest check I wrote for this loan, and a copy is attached at Tab 13A (DKRT800326). I do not recall how the remainder of the interest was paid. It is possible that it was a WDC-related loan and that WDC repaid the loan and paid most of the interest (see my response to no. 13(d), infra).

Please see Global Response to No. 13, supra. As previously indicated, I do not have a recollection as to how the proceeds of this loan were used. I attach as Tab 13A a copy of a letter to me from Jim McDougal, dated March 1, 1982 (DKRT700340), which states:

"I have paid from Whitewater Development Corporation the note you owed Citizens Bank of Jonesboro. You are correct in your belief that the sum of money borrowed was a part of your investment in Whitewater."

The letter does not refresh my recollection about the loan.²²³

President Clinton's answer is consistent with the response that Citizens Bank of Jonesboro made to the RTC's subpoena. This investigation has turned up no other evidence as to the purpose of this loan.

²²² See Preliminary Report at 47-48.

²²³ Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 13, at 23-24.

3. Renewal of the Citizens Bank mortgage loan and origination of the Citizens Bank interest funding loan.

The Preliminary Report noted that the Clintons and the McDougals made no payments of principal or interest on the Citizens Bank mortgage loan from August 1981 through November 1982 and that the Company lacked the money to pay the interest that had accrued and was owing as of November 1982 (\$20,000). This situation was rectified by renewing the mortgage loan and by borrowing \$20,000 via a six-month balloon loan from Citizens Bank (the "Interest Funding Loan"). The Preliminary Report said that both of the Clintons and both of the McDougals signed the papers for the Interest Funding Loan, which was recourse to each.²²⁴

The Clintons say they have no particular recollection of the Interest Funding Loan and cannot verify that the signatures on the loan documents are theirs. In answer to interrogatories, each stated:

I have no recollection of this loan. It is possible that I signed an application for this loan or a promissory note at the request of Jim McDougal, although I do not recall doing so. I have no knowledge of how or why it was obtained, the terms of the loan, what it was used for, or when and how it was repaid. After receiving these interrogatories, my counsel were able to obtain from the successor to Citizens Bank and Trust Company a copy of what appears to be a promissory note for the loan referenced here, and this document is attached hereto at Tab 14A (DKRT11000809-11000811). The copy is not a particularly clear one, and I cannot be certain that the signature on the note is in fact mine.²²⁵

If the Clintons did sign the papers for this loan, the need to borrow money to cover their interest obligation might have suggested to them that sales did not suffice to cover debt service. Such an inference, if drawn, might have raised a question in their minds: It would have contradicted McDougal's statement to them in 1981 that "[t]hings are looking pretty good at Whitewater as our receivables run about equal to what we owe."²²⁶ The Clintons say

224 See Preliminary Report at 52-54.

225 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 14, at 25; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 14, at 25-26.

226 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-29; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-32, referring to DKRT900101.

they did not know of any problem covering debt service.²²⁷ In any event, such knowledge as of 1982 would be remote in time and substance from the questionable transactions: the McDougal bonuses and transaction 8 (1985-1986).

4. Problems at Madison Bank.

The Preliminary Report described an FDIC cease and desist order entered against Madison Bank in April 1983.²²⁸ The Clintons say that neither of them learned of the FDIC cease and desist order until 1995, when they read the order in the attachments to the RTC's interrogatories to them.²²⁹

5. The refinancing of Mrs. Clinton's Madison bank loan using money that Governor Clinton borrowed from Citizens Bank of Paragould.

The Preliminary Report noted that Governor Clinton borrowed \$20,800 from Citizens Bank of Paragould in September 1983 and used that money to pay down Mrs. Clinton's loan from Madison Bank (the loan used to refinance the prefab house on Whitewater lot 13).²³⁰ President Clinton attaches no significance to the fact that he rather than Mrs. Clinton borrowed \$20,800 from Security Bank of Paragould in 1983 to replace Mrs. Clinton's \$30,000 loan from Madison Bank. The Clintons anticipated that the Company would be responsible for repayment of the loan, since it had obtained the benefit of the loan. The warranty deed to lot 13 was in Mrs. Clinton's name, but when the Company sold the lot and the house to Hilman Logan, the warranty deed to Logan was in the names of both of the Clintons. Both Clintons are listed as borrower in some of the renewal notes from Security Bank, e.g., DKRT200785.²³¹

227 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-29; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-32.

228 See Preliminary Report at 54-56.

229 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 11(g), at 20; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 11(g), at 20.

230 See Preliminary Report at 57-58.

231 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 12(a), at 20-21.

Neither of the Clintons recalls why the loan was shifted from Madison Bank to Security Bank, nor do they recall approaching any banks about this matter.²³²

Neither of the Clintons recalls talking to Marlin Jackson about the Security Bank of Paragould loan.²³³ Mrs. Clinton, however, confirms receiving several letters from Jackson and also notes a telephone message dated March 2, 1987, DKRT11000402. Mrs. Clinton thinks she also talked to Bill Fisher, President of Security Bank in the period 1987-1988. She does not recall the conversations but the documents suggest that their general topic was the fact that the Company was not making payments on the loan in a timely manner.²³⁴

The Preliminary Report questioned whether the proceeds of the Security Bank of Paragould loan sufficed to repay the Madison Bank loan in full.²³⁵ President Clinton thinks that the money obtained from Security Bank was sufficient to pay off Madison Bank in full. He cites Madison Bank's real estate mortgage release, DKRT700383, which was a full release.²³⁶ This point need not be resolved; no evidence ties the repayment to Madison Guaranty.

6. Operations and cash flow for fiscal year 1984.

The Preliminary Report noted that Whitewater had a negative cash flow after debt service, which it covered by obtaining money from McDougal-controlled entities.²³⁷ As noted above, both of the Clintons indicate that they knew little before 1992 about Whitewater's lot sales between 1980 and 1985, Whitewater's cash flow between 1980 and 1986, the McDougals' expenditures on the project between 1980 and 1986, or the source of the McDougals'

232 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 12(d), at 22; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 12(d), at 21.

233 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 12(e), at 22-23; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 12(e), at 21.

234 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 12(e), at 21-22.

235 See Preliminary Report at 57-58, 65-66.

236 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 12(b), at 21-22.

237 See Preliminary Report at 59-60.

money.²³⁸ Similarly, in response to Interrogatory No. 20, the Clintons state that they have no knowledge of the source of funds that Whitewater used between 1984 and 1986 to pay down bank loans.²³⁹ Except possibly for the Interest Funding Loan of 1982-1983, which is relevant to knowledge of cash flow, no contrary evidence has been found.

7. Madison Guaranty's examination and supervisory agreement.

The Preliminary Report described an FHLBB Report of Examination, issued in June 1984, that was sharply critical of Madison Guaranty.²⁴⁰ The Clintons state that they were unaware of the 1984 Report of Examination and the 1984 Supervisory Agreement. Neither Clinton recalls reading or learning the contents of either of these documents.²⁴¹

E. Investigation of the possible flow of funds from Madison Guaranty to Whitewater.

The Preliminary Report described a series of nine deposits into Whitewater and analyzed each to see whether it might be traced back to Madison Guaranty.²⁴² The Clintons were asked a series of detailed questions designed to probe their knowledge (if any) of the facts underlying these transactions. The Clintons answered that they know nothing about these matters.²⁴³

The available evidence is consistent with this answer. While, as noted, the Clintons might at one point have had cause to question whether the lot sales covered debt service, that event--the signing of the Interest Funding

238 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-29; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-32.

239 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 20, at 38-39; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 20, at 49.

240 See Preliminary Report at 63.

241 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 16(b), at 30-31; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 16(b), at 33.

242 See Preliminary Report at 69-94. These nine transactions are analyzed in detail in part II above.

243 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answers to Interrogatories Nos. 15, 16, 19, 20, at 27-31, 35-39; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answers to Interrogatories Nos. 15, 16, 19, 20, at 27-33, 45-50.

Loan--occurred in 1982. In contrast, the nine transactions started late in 1984 and ended in 1986. The evidence does not suggest that the Clintons had any knowledge of the source of the funds used in the nine transactions.

F. Investigation of other possible connections between Madison Guaranty and Whitewater.

1. 1985: The McDougal bonus and the payments to Senator Fulbright.

The Preliminary Report discussed a transaction by which former Senator J. William Fulbright sold a parcel of land near Little Rock (the "Deltic parcel") to an entity called Earth Movers. The transaction was funded in part by a putative bonus of \$30,000 paid by Madison Financial to Whitewater on behalf of Jim McDougal; the \$30,000 simply passed through Whitewater, which did not end up with any interest in the land.²⁴⁴

The Clintons state that they know nothing about the Deltic transaction, the bonus or the other matters described in this section of the Preliminary Report.²⁴⁵ No contrary evidence has been found.

2. 1985: Contributions to the Clinton campaign.

The Preliminary Report discussed a campaign fund raiser held April 4, 1985 at Madison Guaranty's offices in Little Rock, at which a number of people associated with Madison Guaranty made campaign contributions to Governor Clinton.²⁴⁶ In interrogatories, the Clintons were asked about this campaign fund raiser. Mrs. Clinton states that she did not attend this fund raiser, does not know whether Senator Fulbright attended and knows nothing about the contributions made at the fund raiser, including their source and use. She states:

I have no knowledge that any monies obtained directly or indirectly from WDC or any account of Madison Guaranty were ever improperly used to pay any of my or my husband's "personal or political expenses or debts." As indicated in these responses, we anticipated that the WDC venture would be able to repay the acquisition loans and other loans and expenses identified herein,

²⁴⁴ See Preliminary Report at 94-102.

²⁴⁵ Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 22 at 43-44; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 22, at 53-54.

²⁴⁶ See Preliminary Report at 102-14.

because, again as previously stated, we expected that the WDC venture would ultimately become self-financing.²⁴⁷

Beyond that, Mrs. Clinton indicates that she knows a number of the donors and was probably acquainted with certain others of them, although she would not say that she knew any of them "well."²⁴⁸

President Clinton states that he did attend the fund raiser but does not believe that Senator Fulbright attended, although McDougal had scheduled the event in the hope Senator Fulbright would be able to attend. President Clinton recalls nothing about the circumstances of any contribution that Senator Fulbright may have given.²⁴⁹ President Clinton indicates that he was acquainted with a number of the contributors but he knows nothing about the source of the funds they used to make the contributions, nor does he know how much, if any, of the money obtained through the contributions was used to repay his debt to the Bank of Cherry Valley.²⁵⁰ No contrary evidence has been found.

3. 1986-1988: David Hale and the International Paper deal.

The Preliminary Report discussed a \$300,000 loan to Susan McDougal made by David Hale's Capital Management, Inc., \$25,000 of which was used to fund part of a purchase of land from International Paper Realty Company made in the name of Whitewater.²⁵¹ The discussion noted press reports that Hale claims President Clinton pressured him into making the loan.²⁵²

President Clinton states:

I don't know what "alleged claim" David Hale has made. I don't recall any conversation with David Hale about loaning money to Jim McDougal, Susan McDougal, Master Marketing, Madison Guaranty, or any entity owned by the McDougals, and I am certain

247 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 21, at 50.

248 *Id.*, answer to Interrogatory No. 21(c), at 52.

249 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answers to Interrogatories Nos. 21(a) and 21(b), at 39-40.

250 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answers to Interrogatories Nos. 21(c)-21(h), at 41-43.

251 See Preliminary Report at 115-22.

252 *Id.* at 115.

I never "pressured" Hale or any company he owned to make any loan.²⁵³

Mrs. Clinton states that she did not have any conversation with Hale about loaning money to the McDougals or Madison Guaranty.²⁵⁴ Both of the Clintons state that they had no knowledge of the \$300,000 loan made by Capital Management to Susan McDougal dba Master Marketing.²⁵⁵

Whitewater bought the International Paper parcel in October 1986. Shortly thereafter, McDougal sent the Clintons a "status report" letter dated November 14, 1986.²⁵⁶ The RTC's interrogatories asked about this letter. Mrs. Clinton answered and President Clinton incorporated by reference her answer. Mrs. Clinton states that she believes that she and her husband received the letter, but she cannot recall the circumstances. With regard to McDougal's offer to have Charles James go over Whitewater's books with the Clintons, she says that the Clintons relied on McDougal's representations and did not feel a need to review the books. Mrs. Clinton states that she was encouraged by the letter to the extent that it suggested that Whitewater would have sufficient income to settle its affairs and be wound up when the debt was finally paid off.²⁵⁷

Mrs. Clinton also describes discussions that the Clintons had with McDougal at about this time about getting out of Whitewater:

I don't recall whether we had specific discussions with Jim McDougal about his letter, but I know that we did have discussions with him at about this time concerning our getting out of WDC. As I recall these discussions, Jim asked us to surrender our equity in the company to him or to him and Susan, because he believed they could use the company's losses for "tax purposes," as his letter says, although I do not know what those "tax purposes" were. My husband and I were not averse to doing this, since WDC by this time was a venture in which we had spent

253 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 23(a), at 44-45.

254 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 23, at 54-55.

255 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 23(c), at 45; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 23(c), at 55.

256 See Preliminary Report at 119-20.

257 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 24(a), at 56-57.

a great deal of money and received no return, but we did not want to be in a position of losing whatever equity we had in the company while still being personally obligated on the mortgage loan at Citizens Bank in Flippin and on the Lot 13 loan which was, as of this time, at the Security Bank of Paragould. As I recall our discussions, it proved impossible to get my husband and me released from these loans, so we ultimately declined to surrender our equity in WDC to the McDougals. During these discussions, neither of the McDougals suggested that we should contribute more money to the venture.²⁵⁸

Mrs. Clinton says that at no time before 1989 did she know anything about the purchase by Whitewater of 810 acres of land from International Paper Realty Corporation; to the contrary, she believed that Whitewater was in the process of winding up its affairs.²⁵⁹ No contrary evidence has been found.

G. 1985-1992: Whitewater after the land was gone.

1. The bulk sale to Ozark Air and its assumption of some of the debt.

The Preliminary Report discussed the bulk sale of Whitewater's remaining lots to Chris Wade's Ozark Air in May 1985 and the periodic reduction thereafter in the amount owing on the Citizens Bank mortgage loan, culminating in its final repayment in May 1992.²⁶⁰ Asked why between July 1986 and May 1992, the Clintons did not repay the Citizens Bank mortgage loan, Mrs. Clinton answered:

As previously indicated, it was always intended that this mortgage loan would be repaid by the income stream generated by the escrow contracts from lots that had been sold. *We saw no reason to prepay the mortgage personally.* The mortgage was ultimately paid off completely, as were all the WDC bank loans which my husband and I signed for at the Union Bank, the Bank of Cherry Valley, the Bank of Kingston (Madison Bank and Trust), and the Security Bank of Paragould. To the best of my knowledge, my

258 *Id.*, answer to Interrogatory No. 24(b), at 57-58.

259 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 24(c), at 59-60. President Clinton incorporated by reference his wife's answer to this interrogatory. Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 24, at 46-47.

260 See Preliminary Report at 123-25.

husband and I never signed for a WDC loan at Madison Guaranty Savings & Loan or any other savings and loan association.²⁶¹

The reference to "prepay[ing]" the mortgage is puzzling. The loan was a series of one- or two-year notes. It was not a long-term amortizing mortgage.

2. The decline in the recourse debt.

The Preliminary Report discusses the partial conversion of Whitewater's debt from debt that was recourse to the shareholders to debt that was nonrecourse. It noted that the advances from McDougal and McDougal-controlled entities effected this change; they, instead of the banks, became the project's principal creditors.²⁶² In its interrogatories, the RTC asked the Clintons why, between the end of fiscal year 1981 and fiscal year 1986, the Clintons spent essentially nothing on Whitewater. Mrs. Clinton responded:

We made a financial contribution to the project whenever we were requested to by the McDougals. There were many years in which the McDougals did not ask for a contribution. As already indicated, however, we expected the project to be essentially self-financing when the requisite number of lots had been sold. Indeed, Jim McDougal wrote to us in 1981 that "[t]hings are looking pretty good at Whitewater as our receivables run about equal to what we owe." DKRT900101, attached hereto at Tab 26(A). Please see my response to No. 7(c), supra.²⁶³

As noted above, the Interest Funding Loan, if signed by the Clintons, might raise a contrary inference, but that inference would apply to 1982-1983. The recourse debt did not decline significantly until 1985-1986.

3. Operations and cash flow in fiscal years 1985 and 1986.

As noted above, both of the Clintons indicate that they knew little before 1992 about Whitewater's lot sales between 1980 and 1985, Whitewater's cash flow between 1980 and 1986, the McDougals' expenditures on the project

261 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 26(f), at 68 (emphasis added).

262 See Preliminary Report at 125.

263 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 26(b), at 67.

between 1980 and 1986, or the source of the McDougals' money.²⁶⁴ Similarly, in response to Interrogatory No. 20, the Clintons again state that they have no knowledge of the source of funds that Whitewater used between 1984 and 1986 to pay down bank loans.²⁶⁵ Asked whether the Clintons knew at any time between 1978 and 1986 that they had not spent nearly as much on the Whitewater project as had the McDougals, Mrs. Clinton answered: "We did not know, in this time period, precisely what our and the McDougals' respective financial contributions to the project were."²⁶⁶ No contrary evidence has been found.

4. The Lyons report.

The Preliminary Report discussed the conclusions of the Lyons Report and reconciled the Lyons Report's calculation of the Clintons' total investment in Whitewater (\$46,137) to the total investment figure presented in the Preliminary Report (\$35,970).²⁶⁷ In her interrogatory answers, Mrs. Clinton presented numbers that differ slightly from those presented in the Preliminary Report. Based on her review and her counsel's review of the available records, she said she believes that the Clintons spent over \$46,600 on Whitewater, as follows:

the \$37,849.93 which we had expended through calendar year 1986 (please see my response to No. 15(d)(3) and 15(d)(8), supra), \$2561.33 in interest payments on the Security Bank of Paragould Loan in 1987, \$1473.60 in interest payments on that loan in 1988, \$1275.15 in real estate taxes in 1988, \$291.35 in real estate taxes in 1989, \$345.15 in franchise taxes in 1990, and \$2839.24 in 1991 for accounting work to prepare various tax filings for WDC.²⁶⁸

264 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-29; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-32.

265 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 20, at 38-39; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 20, at 49.

266 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 26(c), at 67.

267 See Preliminary Report at 129-31.

268 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 26(a), at 66-67.

For the most part, any inconsistency between these numbers and those that appear in the Preliminary Report is more apparent than real.²⁶⁹ In their interrogatory answers, the Clintons used calendar years. For the most part, the Preliminary Report uses Whitewater's fiscal year. That one difference explains several of the apparent inconsistencies.²⁷⁰

The remaining apparent inconsistencies between Mrs. Clinton's interrogatory answers and the Preliminary Report also can easily be reconciled. Apart from timing differences explained above (fiscal versus calendar year), the sole difference between Mrs. Clinton's statement and the Preliminary Report about advances in 1981 is that the Preliminary Report excluded \$243.82 paid to Citizens Bank of Jonesboro, whereas Mrs. Clinton did not.²⁷¹ The same is true with respect to Mrs. Clinton's answer about advances through 1986: The sole differences are timing differences (fiscal versus calendar year) plus the \$243.82 paid to Citizens Bank of Jonesboro.²⁷² Finally, Mrs. Clinton includes the \$1,000 received from Jim McDougal in 1992, whereas the Preliminary Report did not.²⁷³

5. The 1986 examination of Madison Guaranty, the cease and desist order and McDougal's final removal from Madison Guaranty and Madison Financial.

The Preliminary Report summarized the events leading to McDougal's removal from any connection with Madison Guaranty and Madison Financial.²⁷⁴ The Clintons state that they had no knowledge of the 1984

269 The same is true of inconsistencies between the numbers in the Preliminary Report and numbers found on the Vincent Foster "documents mentioning Whitewater in the files this office received from the White House on July 27, 1993." Letter from David E. Kendall to Bruce A. Ericson, dated July 27, 1995, at 1. Those documents contain some numbers that differ from the numbers in the Preliminary Report. *E.g.*, DKSNO00058, DKSNO00068-71. The differences, however, do not seem material. Nor is there anything in these documents that suggests the Preliminary Report overlooked anything of consequence.

270 If one adjusts for the differences between a calendar year and a fiscal year, there are no inconsistencies whatsoever between the numbers set forth in Mrs. Clinton's answers to Interrogatories Nos. 15(d)(1) and 15(d)(7) and the numbers in the Preliminary Report.

271 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 15(d)(2).

272 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 15(d)(8). The report excluded this \$243.82 because no definitive connection between this loan and Whitewater has been made.

273 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 15(d)(3).

274 See Preliminary Report at 131-32.

Report of Examination; the 1984 Supervisory Agreement; the 1986 Report of Examination; and the 1986 Cease and Desist Order. Neither Clinton recalls reading any of these documents or learning about its contents. Furthermore, Mrs. Clinton says that, as of July 17, 1986, she was unaware of the meeting in Dallas at which FHLBB officials instructed Madison Guaranty's board of directors to remove McDougal from his offices.²⁷⁵

6. Mrs. Clinton's work on matters related to Whitewater after Jim McDougal ceased to manage Whitewater's financial affairs.

The Preliminary Report discussed the Clintons' repurchase of Whitewater lot 13 after its purchaser, Hilman Logan, went bankrupt.²⁷⁶ In 1988, when the Company was unable to make payments on the Security Bank loan, the Clintons personally repaid the loan by buying lot 13 out of Hilman Logan's bankruptcy and then reselling this real estate. Mrs. Clinton explains:

At some point in 1987, I learned that Hilman Logan had declared bankruptcy, and I asked a bankruptcy lawyer at the Rose Law Firm, Allen Bird, to assist us in determining how to assure that our rights under the escrow contract were protected. In the 1987-1988 period, it became evident to us that WDC might not be able to pay off the Security Bank loan. In 1988, Mr. Bird was able to negotiate with the Hilman Logan estate and with the federal bankruptcy trustee in Mississippi an arrangement whereby my husband paid \$8000 of our own funds into the Bankruptcy Court and personally acquired the Logan estate's equity in lot 13. . . . In the meantime, the Ozarks Realty Company had negotiated for us the sale of Lot 13 to John and Marilyn Lauramoore for \$27,500. . . . After this sale, my husband and I were able to pay off the remaining principal and interest at the Security Bank, pay the seller's closing cost on the transaction, recover our \$8000 personal investment, and realize \$1640, which we reported as a capital gain on our 1988 tax return.²⁷⁷

The documentary evidence is consistent with this explanation.

275 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 16(b), at 30-31; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answers to Interrogatory No. 16(b), at 33, and Interrogatory No. 17(g)(5), at 38.

276 See Preliminary Report at 133-36.

277 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 12(f), at 23-24 (citations omitted).

The Preliminary Report also discusses Mrs. Clinton's efforts in 1988 and thereafter to tend to Whitewater's affairs and, in particular, its delinquent taxes. It mentioned Mrs. Clinton's efforts to obtain a power of attorney from Jim McDougal.²⁷⁸ In her answer to interrogatories, Mrs. Clinton describes at great length her attempts to obtain a power of attorney from the McDougals in 1988 and the difficulties she had reaching them and attempting to straighten out the affairs of Whitewater.²⁷⁹

7. The Clintons sell their remaining interest to McDougal.

The Preliminary Report discusses the transaction in 1992 by which the Clintons sold their remaining interest in Whitewater to McDougal for \$1,000.²⁸⁰ Mrs. Clinton states that the purpose of the agreement was to divest all of the Clintons' interests in Whitewater. The document was negotiated by Jim Blair and drafted by Vincent Foster. When Mrs. Clinton signed the agreement, she did not know that the McDougals had signed a document purporting to assign McDougals' Whitewater stock to Jim McDougal's mother, Lorene McDougal, if indeed they had. The Clintons also were unaware of the International Paper litigation.²⁸¹

The Clintons did not attend the closing meeting of December 22, 1992, at which McDougal bought the Clintons' interest in Whitewater for \$1,000. President Clinton states that, until he answered the RTC's interrogatories, he had not seen Vincent Foster's memorandum of this closing meeting.²⁸² Mrs. Clinton cannot recall seeing the memorandum either, but she thinks she may have seen it or one like it.²⁸³ Regarding Jim McDougal's purported minutes, which Foster received in silence, Mrs. Clinton states that she had not previously seen the minutes and, she says, the purported minutes are inaccurate

since [she] did not either personally or through counsel, attend a meeting of the Board of Directors of WDC on December 22, 1992,

278 See Preliminary Report at 136-37.

279 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 25(a), at 60-63.

280 See Preliminary Report at 137-38.

281 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 25(e), at 64-65.

282 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 25(c), at 48.

283 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 25(d), at 64.

at which "a discussion of the old business of the corporation was held, and all actions of the corporation up to and including this meeting were ratified."²⁸⁴

H. The Clintons' knowledge.

The Preliminary Report posed but did not answer the question whether the Clintons knew about the McDougals' advances to Whitewater, about the source of the funds used to make those advances or about the source of the funds used to make payments on bank debt. In light of the evidence received since the completion of the Preliminary Report, the RTC is in a better position to address these questions.

The Clintons answer these questions by stating that they had no knowledge of these matters. For example, in response to Interrogatory No. 15, both of the Clintons indicate that they knew little before 1992 about Whitewater's lot sales between 1980 and 1985, Whitewater's cash flow between 1980 and 1986, the McDougals' expenditures on the project between 1980 and 1986, or the source of the McDougals' money.²⁸⁵ Similarly, in response to Interrogatory No. 20, the Clintons state that they have no knowledge of the source of funds that Whitewater used between 1984 and 1986 to pay down bank loans.²⁸⁶

Interrogatory No. 19 asks the Clintons about their knowledge of certain facts detailed at length in the various parts to this interrogatory. The Clintons do not provide any such information. Instead, in identical "global responses" they say they do not know whether the facts are accurate or not, and they also assert:

As previously indicated, the McDougals exercised control over the management and operations of WDC for the period of its active existence. My wife and I signed extensions or renewals of various WDC-related bank loans, but we did not receive annual reports or regular financial summaries and were not informed of all the actions taken in the name of WDC. We did not know what expenditures the McDougals made on WDC's behalf, the sources

284 Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 25(f), at 65.

285 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-29; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 15, at 27-32.

286 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 20, at 38-39; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 20, at 49.

of these expenditures, or their nature. As was contemplated from the inception of the venture, we were passive investors and relied upon the McDougals to manage and operate it.²⁸⁷

Putting aside for the moment the legal significance of the phrase "passive investor,"²⁸⁸ the evidence is essentially consistent with this assertion. For the relevant period (ending in 1986), the evidence suggests that the McDougals and not the Clintons managed Whitewater. The evidence does not suggest that the Clintons had managerial control over the enterprise, or received annual reports or regular financial summaries. Instead, and as the Clintons suggest, their main contact with Whitewater seems to have consisted of signing loan extensions or renewals.

This point can be demonstrated by presenting a chronology of the documents identified in this investigation that are addressed to or written by the Clintons pertaining to Whitewater:²⁸⁹

<u>Date</u>	<u>Document</u>	<u>Description</u>
<u>1978</u>		
06/19/78	DKRT900145	Union Bank promissory note.
07/27/78	DKRT900179	Letter from Wade to the McDougals and the Clintons (but addressed only to the McDougals) regarding the closing on the Whitewater property.
08/02/78	DKRT900087	Citizens Bank of Flippin promissory note.
08/02/78	DKRT801033	Citizens Bank mortgage.
09/07/78	DKRT900180	Letter from Wade to the McDougals and the Clintons regarding the closing statement and a survey.

287 Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 19, at 35-36; Interrogatory Responses of Hillary Rodham Clinton, May 24, 1995, answer to Interrogatory No. 19, at 46.

288 See pages 77-78 below.

289 Some press accounts have included chronologies that list contacts between the Clintons and the McDougals other than those listed below. Because no evidence has been found that these conversations pertained to Whitewater, they are not listed here.

12/29/78	DKRT801348	The Clintons' check to Great Southern Land Company for \$10,130.58.
<u>1979</u>		
06/19/79	DKRT900147	First extension of Union Bank note.
08/06/79	DKRT800433	Demand notice from Citizens Bank of Flippin to the McDougals and the Clintons (addressed only to the McDougals' address).
09/17/79	DKRT900151	Second extension of Union Bank note.
09/30/79	DKRT800938-39	Warranty deed from the McDougals and the Clintons to the Company.
11/09/79	CBF0271	Extension agreement for the Citizens Bank mortgage loan.
12/17/79	DKRT900155	Third extension of Union Bank note.
12/29/79	DKRT801346	The Clintons' check to McDougal for \$237.50, reimbursement of interest paid.
12/29/79	DKRT801344	The Clintons' check to Citizens Bank for \$4,752.88.
<u>1980</u>		
01/15/80	DKRT900157	Letter returning canceled second extension of Union bank note.
08/05/80	DKRT800529	Extension and modification agreement with Citizens Bank.
08/21/80	CBF0274	Affidavit warranting the purpose of the Citizens Bank mortgage loan.
08/23/80	DKRT801342	Check for \$9,000 made out in blank and ultimately given to Citizens Bank.
12/16/80	MBT000000087 DKRT900163 DKRT900019	Mrs. Clinton borrows \$30,000 from Madison Bank.

12/28/80	DKRT900021	Warranty deed transfers lot 13 to Mrs. Clinton.
<u>1981</u>		
02/17/81	DKRT400932	The Clintons' check for \$243.82 to Citizens Bank.
06/30/81	DKRT800762	The Clintons' check for \$300 to Madison Bank.
08/01/81	DKRT800742	The Clintons' check for \$300 to Madison Bank.
08/05/81	CBF0282	Extension agreement for the Citizens Bank loan.
09/26/81	DKRT800762	The Clintons' check for \$300 to Madison Bank.
10/06/81	DKRT900101	Letter from McDougal to Mrs. Clinton enclosing an extension agreement for signature. The letter states that "Things are looking pretty good at Whitewater as our receivables run about equal to what we owe. The only problem is our inability to sell the house on the property because of high rates."
10/12/81	DKRT900100	Letter from Mrs. Clinton to McDougal enclosing a signed copy of an extension agreement for the Citizens Bank mortgage loan.
11/10/81	DKRT900044	Letter from Wade to the Clintons confirming that lot 13 had been sold to Hilman Logan.
11/23/81	DKRT800758	Letter from Chris Wade to President Clinton enclosing a warranty deed for lot 13.
12/09/81	DKRT800748-50	Escrow contract for lot 13.
12/27/81	DKRT800763	The Clintons' check for \$600 to Madison Bank.

1982

02/20/82	DKRT101036	The Clintons' check for \$20,744.65 to Madison Bank.
03/01/82	DKRT400989	Letter from McDougal to President Clinton confirming that the Citizens Bank of Jonesboro loan is part of the Clintons' investment in Whitewater.
04/13/82	DKRT100500	Extension agreement for the Bank of Cherry Valley loan.
08/05/82	DKRT700318	Letter from Theresa Pockrus, EVP, Citizens Bank, to Mrs. Clinton.
08/11/82	DKRT400134	Letter from Mrs. Clinton to Pockrus.
11/01/82	DKRT400134 CBF0222	Interest Funding Loan promissory note.
11/01/82	CBF0322	Extension agreement for the Citizens Bank Mortgage Loan.

1983

09/19/83	DKRT100934	Letter from Mrs. Clinton to McDougal enclosing a tax statement for lot 13.
09/30/83	DKRT400136-37	Letter from Security Bank of Paragould to President Clinton enclosing proceeds of the loan.
09/30/83	DKRT400155	Promissory note signed by President Clinton.
09/30/83	SBP0081-82	Loan application (unsigned).
10/14/83	DKRT700112	Extension agreement for Citizens Bank Mortgage Loan.

1984

09/30/84	DKRT200764	Extension agreement for Security Bank of Paragould loan.
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10/01/84	DKRT700556	Letter from Mrs. Clinton to McDougal regarding a notice of final payment received from Security Bank of Paragould.
10/04/84	DKRT101073	Letter from McDougal to Mrs. Clinton enclosing a check for Security Bank of Paragould.
10/04/84	DKRT500917	Whitewater check for \$4,811.19 to Security Bank of Paragould.
10/05/84	DKRT400142	Security Bank of Paragould's notice of past due loan payment addressed to President Clinton.
10/15/84	DKRT700388	Security Bank of Paragould's notice of past due loan payment addressed to President Clinton.
10/22/84	DKRT100735	Letter from Mrs. Clinton to McDougal regarding unpaid property taxes.
11/05/84	DKRT500941	Whitewater check for \$143.65 to Mrs. Clinton relating to property taxes paid on lot 13.
11/21/84	DKRT700307-08	Letter from McDougal to Mrs. Clinton, which reads in full: "I urgently need your personal financial statement to renew the Whitewater note at Flippin."
11/26/84	DKRT700113	Extension agreement for the Citizens Bank Mortgage Loan.
12/12/84	DKRT700414	Memorandum from McDougal to Mrs. Clinton asking the Clintons to sign their financial statement.
<u>1985</u>		
03/26/85	DKRT800557	Memorandum to President Clinton regarding arrangements for the campaign fund raiser to be held at Madison Guaranty.

04/04/85	-	Date of the campaign fund raiser, which President Clinton attended.
10/11/85	DKRT200358	Extension agreement for the Security Bank of Paragould loan.
<u>1986</u>		
02/03/86	DKRT700305	Letter from Security Bank of Paragould to President Clinton enclosing a statement of interest paid.
06/23/86	DKRT700341-45	Note from Carolyn Huber to Mrs. Clinton: "I did not get to speak to Jim. The lady in his office told me you sold the property late last year. She asked that I send the bill to Jim--so I did today." See DKRT700334.
10/22/86	DKRT700334-35	Memorandum from Carolyn Huber to Mrs. Clinton regarding property tax issues on lot 13.
11/14/86	DKRT200475	Letter containing a "status report" on Whitewater sent to McDougal to the Clintons.
11/20/86	DKRT700302	Notice of payment due, sent by Security Bank of Paragould to President Clinton.
12/06/86	DKRT200683	Letter from McDougal to the Clintons regarding the Citizens Bank mortgage.
12/30/86	DKRT400999	The Clintons' check for \$1,635.51 to Security Bank of Paragould.

I. Analysis.

The foregoing list contains essentially all of the documents regarding Whitewater that seem to have been addressed to, or written by, the

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Clintons.²⁹⁰ These documents do not disclose much of substance about Whitewater's sales or its sources and uses of funds. At most, they show that the Clintons signed some checks and bank documents. If such documents were signed in the presence of the McDougals, these occasions could have led to conversations in which questions were asked about Whitewater. That, however, is speculation; in fact, the documents and the interviews reveal no evidence of such conversations. Therefore, on this record, there is no basis to assert that the Clintons knew anything of substance about the McDougals' advances to Whitewater, the source of the funds used to make those advances or the source of the funds used to make payments on bank debt.

in particular, there is no evidence that the Clintons knew anything of substance about the transactions as to which the RTC might be able to establish liability as to people other than the Clintons: the \$30,000 McDougal bonus and transaction 8. There is no evidence that the Clintons knew anything about the bonus. As for the Dean Paul/David Hale/Capital Management transactions that apparently funded Capital Management's \$300,000 loan to Susan McDougal, there is nothing except an unsubstantiated press report that David Hale claims then-Governor Clinton pressured him into making the loan to Susan McDougal.²⁹¹ President Clinton has denied this.²⁹²

The press and others have focused to some extent on the question of whether the Clintons were "passive investors." From a legal point of view, their general status as passive investors (or, for that matter, as active investors) is not the issue.²⁹³ To state a claim against the Clintons (or anyone else), the

290 No attempt has been made to include documents created after December 31, 1986 or received by the Clintons after December 31, 1987. There is no evidence of any possible flow of funds from Madison Guaranty to Whitewater after November 1985. By July 1986, McDougal's control of Madison Guaranty had ended.

291 See Preliminary Report at 115. The RTC has not been able to depose or interview Hale.

292 "I don't know what 'alleged claim' David Hale has made. I don't recall any conversation with David Hale about loaning money to Jim McDougal, Susan McDougal, Master Marketing, Madison Guaranty, or any other entity owned by the McDougals, and I am certain I never 'pressured' Hale or any company that he owned to make any loan." Interrogatory Responses of William Jefferson Clinton, May 24, 1995, answer to Interrogatory No. 23(a), at 44-45.

293 The term "passive investor" receives occasional use in the case law, mainly in tax and securities cases. E.g., *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 692 (1985) (rejecting the notion that the securities laws were designed to protect only "passive investors"); *United Fibertech, Ltd. v. Commissioner of Internal Revenue*, 976 F.2d 445, 446 (8th Cir. 1992) (holding that a passive investor cannot deduct research and experimental expenses in connection with a trade or business); *Casali v. Schultz*, 292 Ark. 602, 607, 732 S.W.2d 836, 838 (1987) (securities case; dissenting opinion); *Schultz v. Rector-Phillips-Morse, Inc.*, 261 Ark. 769, 783, 552 S.W.2d 4, 11 (1977) (securities). The Tax Reform Act of 1986 also added the phrase

(continued...)

RTC must plead and prove "fraud" or "intentional misconduct."²⁹⁴ Knowledge and intent are essential elements of these offenses; absent proof of such knowledge and intent, no claim can be stated.

On this record, there is no basis to charge the Clintons with any kind of primary liability for fraud or intentional misconduct. This investigation has revealed no evidence to support any such claims. Nor would the record support any claim of secondary or derivative liability for the possible misdeeds of others. As set forth in part II above, there is evidence that the McDougals and others may have engaged in intentional misconduct.²⁹⁵ There are legal theories by which one can become liable for the conduct of others--e.g., conspiracy and aiding and abetting.²⁹⁶ On this evidentiary record, however, these theories have no application to the Clintons.

To hold one liable for conspiracy or aiding and abetting, the RTC must plead and prove the elements of these theories. These elements include a general awareness of the wrongful acts being committed by others and an intention to assist in the commission of the primary offenses. There is no evidence here that the Clintons had any such knowledge or intent. Accordingly, there is no basis to sue them.

IV. RECOMMENDATION.

As part of its Madison Guaranty investigation, the RTC deemed it necessary to determine whether Whitewater caused losses to Madison Guaranty and, if so, whether anyone could be sued cost-effectively to make good those losses. Those tasks have been accomplished.

As stated above, the RTC has no cost-effective claims against anyone unless the Independent Counsel's prosecution of the McDougals and Tucker leads to convictions with respect to the loans described as part of transaction 8. Therefore, pending the results of the criminal case, it is recommended that no further resources be expended on the Whitewater part of this investigation.

293(...continued)

"passive activity" to the tax laws. 26 U.S.C. § 469, added by Pub. L. 99-514, Title V, § 501(a), 100 Stat. 2233. None of these usages has any significance for present purposes.

294 12 U.S.C. § 1441a(b)(14)(A)(ii). See Preliminary Report at 7

295 As noted, the McDougals and Jim Guy Tucker have been indicted for an alleged criminal conspiracy involving the Dean Paul, Ltd. loan that is part of transaction 8. See McDouga indictment ¶ 16, at 10-12

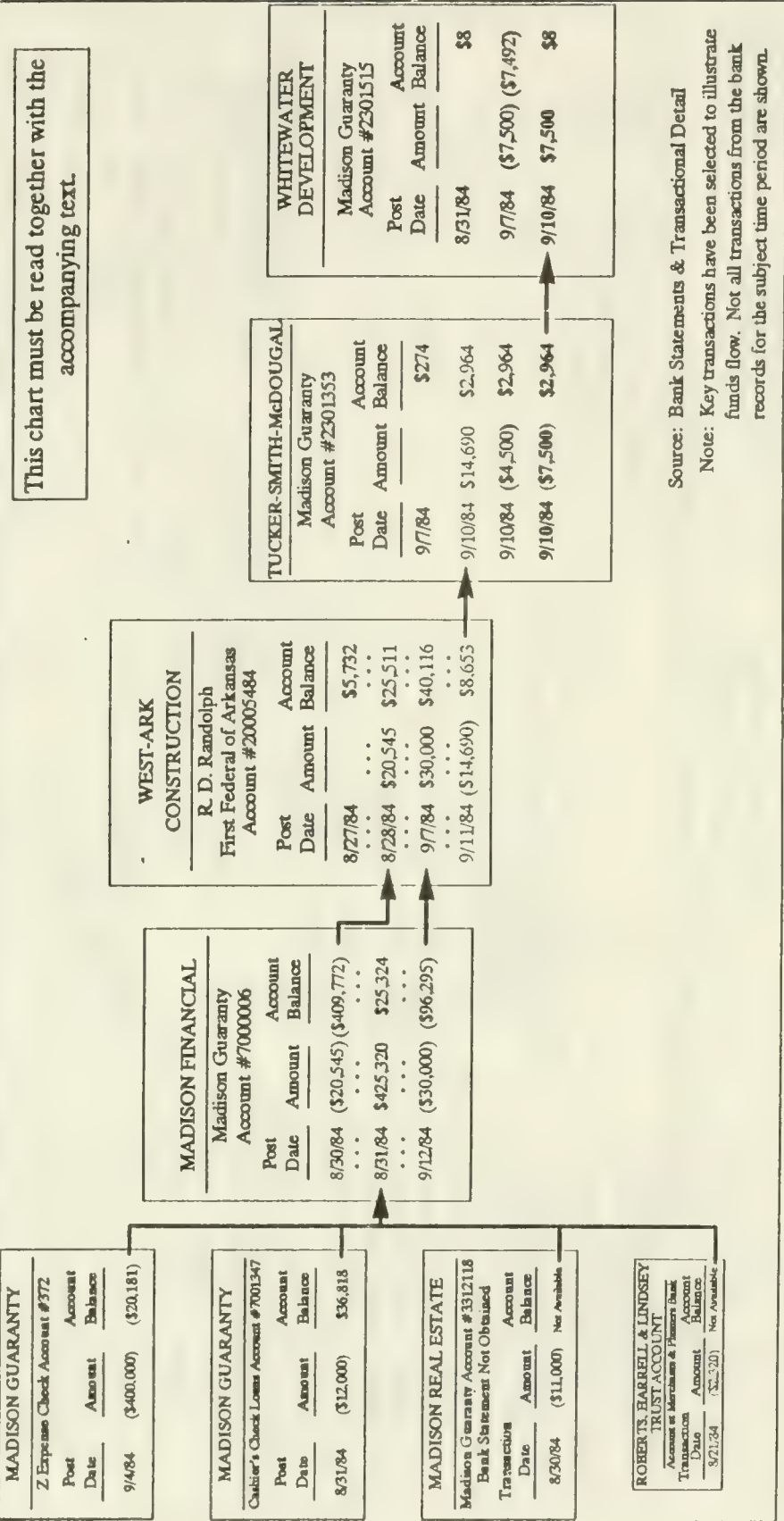
296 See Preliminary Report at 9-11. See also part II.D above.

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September 1984
Transaction

Madison Guaranty Funds Tracing From Tucker-Smith-McDougal

\$7,500 Deposit to Whitewater From Tucker-Smith-McDougal



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November 7, 1984
Transaction

Madison Guaranty
Funds Tracing
\$12,000 Deposit to Whitewater From Flowerwood Farms

This chart must be read together with the
accompanying text.

MADISON FINANCIAL CORPORATION			
Madison Guaranty Account #7000006			
Transaction	Date	Amount	Account Balance
			Not Available
	10/23/84	\$22,300	Not Available
	10/23/84	\$1,027	Not Available
	10/23/84	(\$6,000)	Not Available
	10/24/84	\$11,000	Not Available
	10/26/84	\$10,000	Not Available
	10/26/84	\$600,000	Not Available
	10/30/84	(\$6,650)	Not Available

WEST-ARK CONSTRUCTION			
R. D. Randolph First Federal of Arkansas Account #20005484			
Post Date	Amount	Account Balance	
10/23/84	\$6,000	\$10,942	
10/30/84	...	\$6,028	
10/31/84	\$16,643	\$21,855	
11/6/84	(\$12,000)	\$8,991	

UNDETERMINED DEPOSITORS	
Amount	
(\$9,993)	-----

FLOWERWOOD FARMS			
Madison Guaranty Account #2301361			
Transaction Date	Amount	Account Balance	Not Available
11/5/84	\$12,238		
11/6/84	(\$12,000)		

WHITEWATER DEVELOPMENT			
Madison Guaranty Account #2301515			
Post Date	Amount	Account Balance	
11/2/84		\$292	
11/6/84	(\$18,000)	(\$17,708)	
11/7/84	\$12,000	(\$5,708)	
11/14/84	\$285	(\$5,423)	
11/15/84	(\$15)	(\$5,581)	
11/15/84	(\$143)	(\$5,581)	
11/20/84	\$5,566	(\$15)	
11/27/84	\$144	\$129	

INDIVIDUAL DEPOSITORS	
Transaction Date	Amount
11/5/84	(\$238)

Source: Bank Statements & Transactional Detail
Note: Key transactions have been selected to illustrate funds flow. Not all transactions from the bank records for the subject time period are shown.

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November 20, 1984
Transaction

Madison Guaranty Funds Tracing \$5,566 Deposit to Whitewater From Madison Marketing

MADISON GUARANTY			
Z Expense Check Account #372 (Bank Statement Not Available)			
Transaction Date	Amount	Account Balance	
11/2/84	(\$7,154)	Not Available	
11/13/84	(\$3,929)	Not Available	
11/18/84	(\$60)	Not Available	
11/19/84	(\$25,361)	Not Available	

MADISON FINANCIAL CORPORATION			
Madison Guaranty Account #7000006 (Bank Statement Not Available)			
Transaction Date	Amount	Account Balance	
11/2/84	(\$24,156)	Not Available	
11/2/84	(\$1,607)	Not Available	
11/9/84	(\$5,932)	Not Available	
11/19/84	(\$375)	Not Available	

WHITENER & ASSOCIATES			
Madison Guaranty Account #3307750 (Bank Statement Not Available)			
Transaction Date	Amount	Account Balance	
11/5/84	(\$12,254)	Not Available	
11/13/84	(\$5,035)	Not Available	

CAMPOBELLO PROPERTIES			
Madison Guaranty Account #7000081 (Bank Statement Not Available)			
Transaction Date	Amount	Account Balance	
11/2/84	(\$4,500)	Not Available	
11/5/84	(\$2,181)	Not Available	

MADISON MARKETING			
Madison Guaranty Account #7011872 (Bank Statement Not Available)			
Transaction Date	Amount	Account Balance	
11/5/84	\$45,171	Not Available	
11/5/84	\$2,181	Not Available	
11/15/84	\$4,500	Not Available	
11/16/84	\$14,956	Not Available	
11/19/84	\$25,736	Not Available	
11/19/84	(\$5,566)	Not Available	

WHITEWATER DEVELOPMENT			
Madison Guaranty Account #2301515			
Post Date	Amount	Account Balance	
11/2/84	(\$144)	\$292	
11/6/84	(\$18,000)	(\$17,708)	
11/7/84	\$12,000	(\$5,708)	
11/14/84	\$285	(\$5,423)	
11/15/84	(\$15)	(\$5,581)	
11/15/84	(\$144)	(\$5,581)	
11/20/84	\$5,566	(\$15)	
11/27/84	\$144	\$129	

This chart must be read together with the accompanying text.

Source: Bank Statements & Transactional Detail
Note: Key transactions have been selected to illustrate funds flow. Not all transactions from the bank records for the subject time period are shown.

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January 1985
Transaction

Madison Guaranty Funds Tracing \$1,000 Deposit to Whitewater From Flowerwood Farms

This chart must be read together with the
accompanying text.

MADISON FINANCIAL CORPORATION

Madison Guaranty Account #7000006

Post Date	Amount	Account Balance
1/14/85	(\$46,000)	(\$54,688)
1/16/85	\$117,456	\$29,041

MADISON REAL ESTATE

Madison Guaranty Account #3311596

Post Date	Amount	Account Balance
1/11/85	(\$46,000)	\$6,036
1/11/85	\$46,000	\$6,036

BILL HENLEY

Madison Guaranty Account #3311634
(Bank Statement Not Available)

Transaction Date	Amount	Account Balance
1/9/85	\$46,000	Not Available
1/23/85	(\$28,500)	\$2,109

FLOWERWOOD FARMS

Madison Guaranty Account #2301361

Post Date	Amount	Account Balance
1/21/85	...	\$867
1/23/85	\$28,500	\$29,267
1/24/85	(\$3,500)	\$25,767
1/25/85	(\$6,202)	\$19,565
1/28/85	(\$1,000)	\$15,065
1/28/85	(\$3,500)	\$15,065

WHITewater DEVELOPMENT

Madison Guaranty Account #2301515

Post Date	Amount	Account Balance
1/24/85		\$446
1/28/85	\$1,000	\$446
1/28/85	(\$1,000)	\$446

WHITewater DEVELOPMENT ESCROW ACCOUNT

Citizens Bank Account #3175

Post Date	Amount	Account Balance
1/25/85	\$1,000	\$1,478
1/29/85	\$262	\$1,740
2/1/85	\$196	\$1,936
2/4/85	\$146	\$2,082
2/5/85	\$241	\$2,323
2/6/85	(\$2,304)	\$19

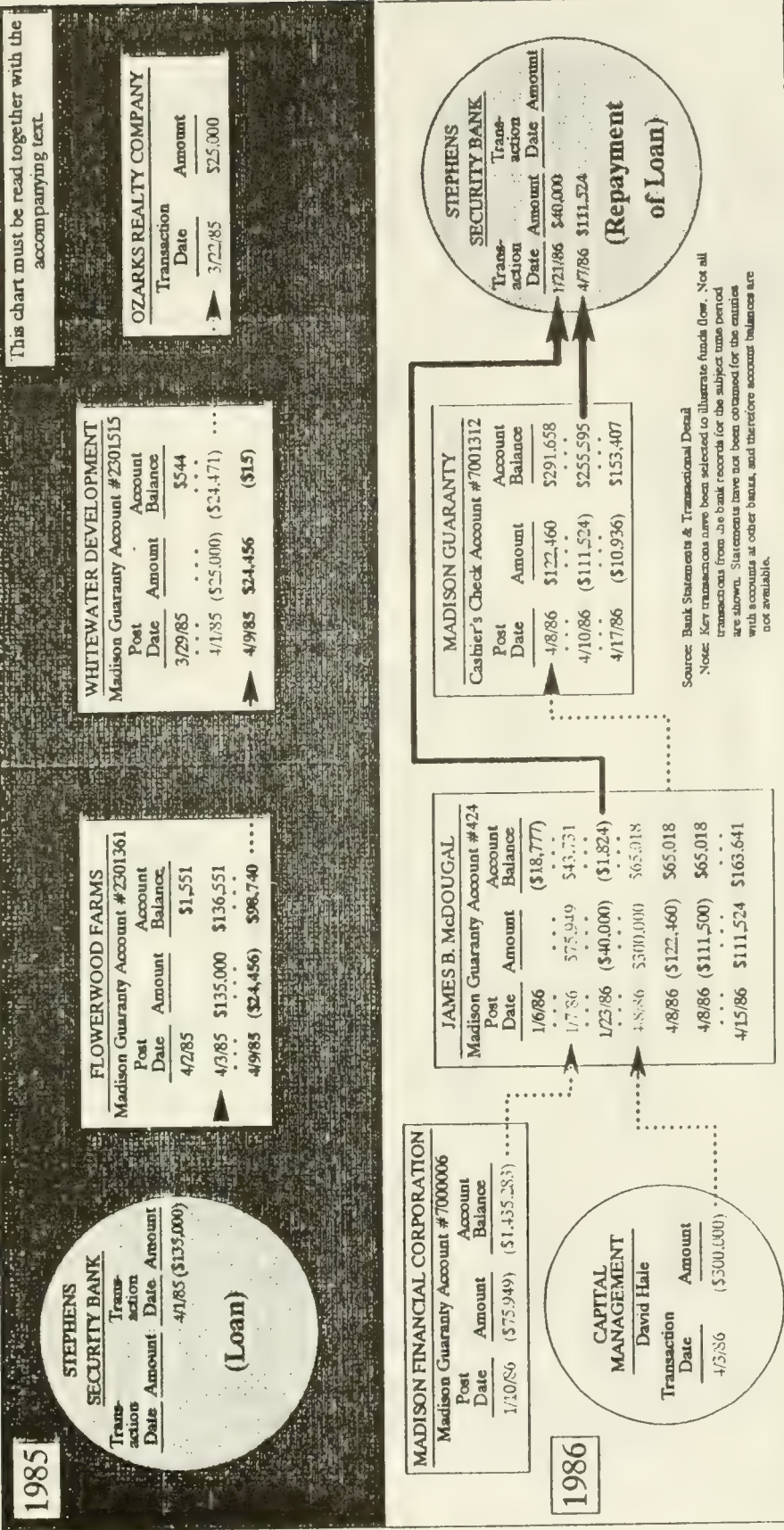
Source: Bank Statements & Transactional Detail

Note: Key transactions have been selected to illustrate funds flow. Not all transactions from the bank records for the subject time period are shown.

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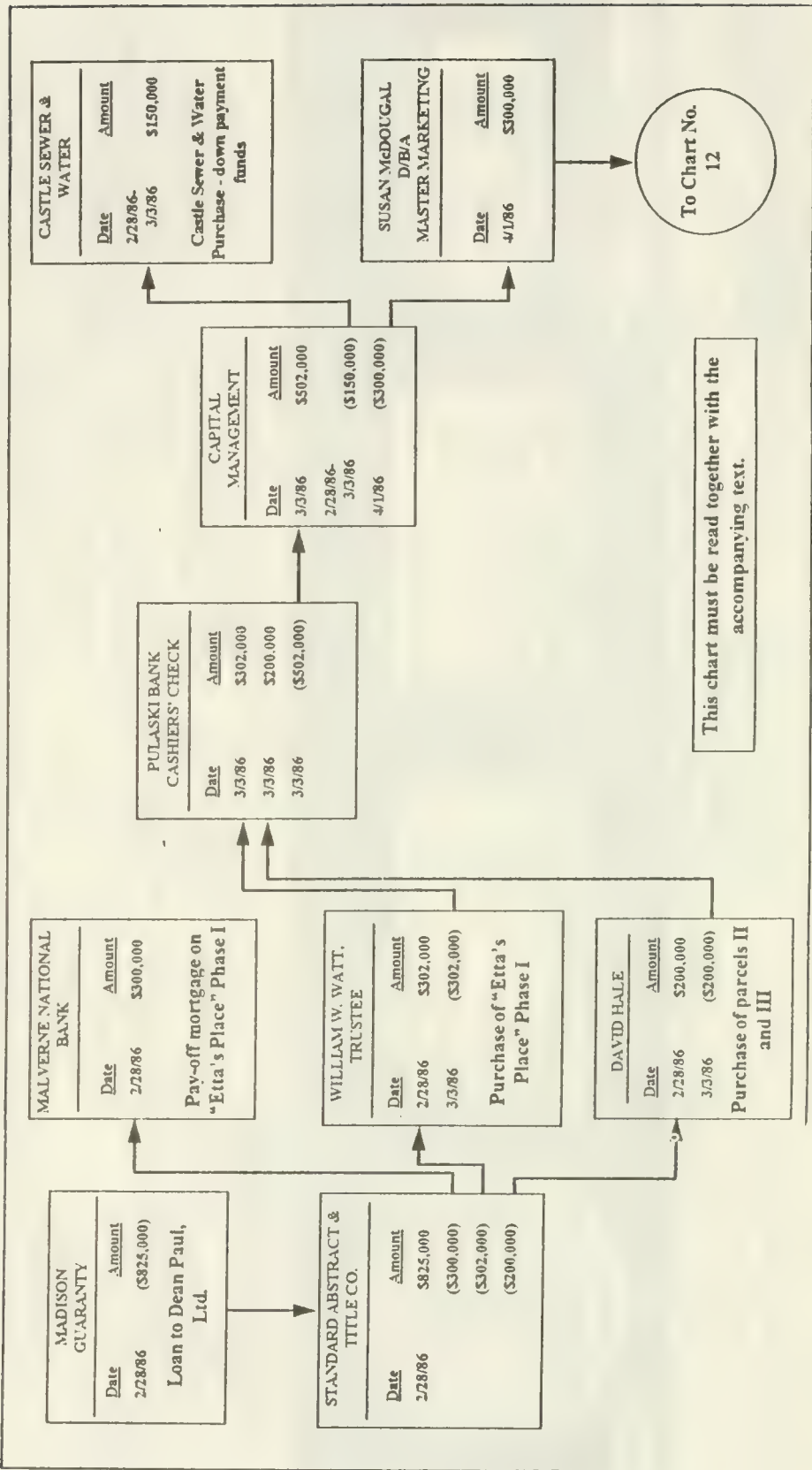
April 1985
Transaction

Madison Guaranty
Funds Tracing
\$24,456 Deposit to Whitewater From Flowerwood Farms



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Madison Guaranty
Dean Paul, Ltd. Loan - Flow of Funds



November 1985
Transaction

Madison Guaranty
Funds Tracing

\$7,500 Deposit to Whitewater From Madison Marketing

MADISON GUARANTY			
Z Expense Check Account #372			
Post Date	Amount	Account Balance	
10/28/85	(\$48,183)	(\$67,642)	

Whitener & Associates			
Madison Guaranty Account #3307750 (Bank Statement Not Available)			
Transaction Date	Amount	Account Balance	Not Available
10/25/85	(\$3,533)		

MADISON FINANCIAL CORPORATION			
Madison Guaranty Account #7000006			
Post Date	Amount	Account Balance	
10/28/85	(\$2,000)	(\$414,219)	
10/28/85	(\$17,068)	(\$414,219)	
10/28/85	(\$37,579)	(\$414,219)	
10/28/85	\$30,000	(\$414,219)	
10/28/85	\$70,000	(\$414,219)	
10/28/85	\$500,000	(\$414,219)	
...	
10/30/85	(\$27,110)	(\$424,637)	

Campobello Properties			
Madison Guaranty Account #7000081			
Post Date	Amount	Account Balance	
10/31/85	(\$14,375)	(\$314,334)	

MADISON MARKETING			
Madison Guaranty Account #7011872			
Post Date	Amount	Account Balance	
10/25/85	\$89,295	\$162,864	
...	
10/29/85	\$27,110	\$141,861	
...	
10/30/85	\$14,375	\$131,770	
...	
11/8/85	(\$7,500)	\$23,837	

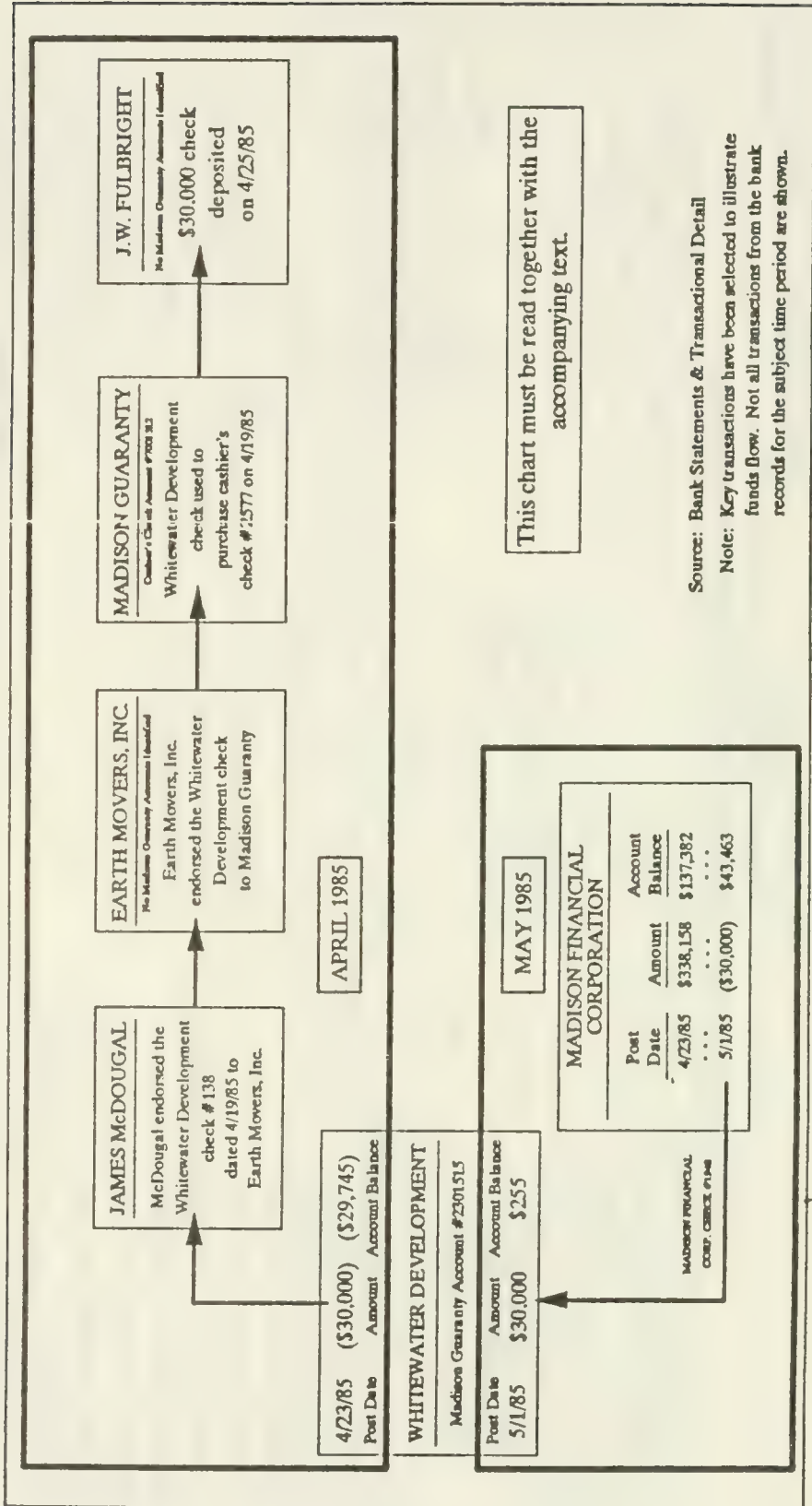
WHITEWATER DEVELOPMENT			
Madison Guaranty Account #2301515			
Post Date	Amount	Account Balance	
10/31/85		\$12	
11/8/85	\$7,500	\$7,512	
11/14/85	\$285	\$7,797	
11/15/85	(\$7,322)	\$475	

This chart must be read together with the accompanying text.

Source: Bank Statements & Transactional Detail
Note: Key transactions have been selected to illustrate funds flow. Not all transactions from the bank records for the subject time period are shown.

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Madison Guaranty The \$30,000 Bonus Paid to James McDougal



Madison Guaranty McDougal Payments April 1982 - May 1986

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This chart must be read together with the
accompanying text.

Date of Deposit into Whitewater (Deposit Used To Fund Payment To - Amount)										Link to Madison Guaranty			
	Flowerwood Farms	Tucker-Smith-McDougal	Pembroke Manor	Madison Marketing	Smith-McDougal	Great Southern Land	Rolling Manor	Smith-Tucker-McDougal	Jim McDougal, Trustee	Amount of Deposit	Traceability Not Established	Traceability Can be Established	Not Reviewed
1. September 10, 1984 (Bank of Cherry Valley - \$7,500)		X								\$7,500		\$7,500	
2. October 26, 1984 (Security Bank - \$4,811)			X		X	X			X	\$3,050	\$3,050		
3A. November 7, 1984 (Citizens Bank - \$18,000)	X									\$12,000		\$12,000	
B. November 20, 1984 (Same as 3A.)				X						\$5,566		\$5,566	
4. December 7, 1984 (Citizens & Cherry Valley Bank - \$9,276)		X	X				X		X	\$9,310	\$9,310		
5. January 10, 1985 (Bank of Cherry Valley - \$5,071)	X	X	X		X		X			\$4,660	\$4,660		
6. January 28, 1985 (Citizens Bank Escrow Account - \$1,000)	X									\$1,000		\$1,000	
7. March 12, 1985 (Wade and others - \$5,625)		X	X				X	X		\$5,800	\$5,800		
8. April 9, 1985 (Ozarks Realty - \$25,000)	X									\$24,456		\$24,456	
9. November 8, 1985 (Security Bank - \$7,322)				X						\$7,500		\$7,500	
10. Other Fiscal Year 1986 Deposits (2)										\$2,700	\$2,700		
11. Fiscal Year 1983 and prior										\$2,168			\$2,168
12. Fiscal Year 1984										\$18,584			\$18,584
Total										\$104,294	\$25,520	\$58,022	\$20,752

Note: Whitewater also received \$30,000 from Madison Financial (the McDougal bonus) on May 1, 1985. This payment has been linked to an earlier \$30,000 payment by Whitewater to Earth Movers, Inc. on April 23, 1985.

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